

## FREEDOM COURT REPORTING

<p style="text-align: center;">Page 1</p> <p>1     IN THE UNITED STATES DISTRICT COURT 2     FOR THE MIDDLE DISTRICT OF ALABAMA 3         EASTERN DIVISION 4 5     VICTOR SMITH, 6         Plaintiff, 7     versus            3:05-CV-1186-MEF 8     EURO-PRO MANAGEMENT 9     SERVICES, INC., 10        Defendant. 11 12 13 14        ***** 15 16        DEPOSITION OF RALPH HUDNALL, 17     taken pursuant to stipulation and agreement 18     before Jackie Parham, Certified Shorthand 19     Reporter and Commissioner for the State of 20     Alabama at Large, in the law offices of Bowles 21     &amp; Cottle, 2 South Dubois Street, Tallassee, 22     Alabama, on Wednesday, the 4th day of October, 23     2006, commencing at approximately 10:15 a.m.</p>	<p style="text-align: center;">Page 3</p> <p>1         STIPULATION 2     It is hereby stipulated and agreed by 3     and between counsel representing the parties 4     that the deposition of 5         RALPH HUDNALL 6     may be taken before Jackie Parham, Certified 7     Shorthand Reporter and Commissioner for the 8     State of Alabama at Large, without the 9     formality of a commission, and all formality 10    with respect to other procedural requirements 11    is waived; that objections to questions, other 12    than objections as to the form of the question, 13    need not be made at this time, but may be 14    reserved for a ruling at such time as the said 15    deposition may be offered in evidence or used 16    for any other purpose, by either party, as 17    provided for by the Federal Rules of Civil 18    Procedure. 19         It is further stipulated and agreed by 20     and between the parties hereto and the witness 21     that the signature of the witness to this 22     deposition is hereby not waived.</p>
<p style="text-align: center;">Page 2</p> <p>1         APPEARANCES 2 3     APPEARING ON BEHALF OF THE PLAINTIFF: 4     JOHN I. COTTLE, III, ESQUIRE 5     Bowles &amp; Cottle 6     2 South Dubois Street 7     Tallassee, Alabama 36078 8 9     Also present: Victor Smith 10 11 12     APPEARING ON BEHALF OF THE DEFENDANT: 13     WARREN B. LIGHTFOOT, ESQUIRE 14     Maynard, Cooper &amp; Gale 15     1901 Sixth Avenue North 16     2400 AmSouth/Harbert Plaza 17     Birmingham, Alabama 35203 18 19        ***** 20 21 22 23</p>	<p style="text-align: center;">Page 4</p> <p>1         INDEX 2 3     PX-1 (Notice of Depo) ..... 17 4     PX-2 (Responses and Requests for .... 20 5         Production) 6     PX-3 (Victor Smith's Resume') ..... 41 7     PX-4 (Position Description) ..... 41 8     PX-5 (Employee Evaluation) ..... 41 9     PX-6 (Evaluation of Victor Smith) .... 44 10    PX-7 (W-2 Forms) ..... 46 11    PX-8 (List of Topics for ..... 46 12         Termination) 13    PX-9 (E-Mail Messages) ..... 47 14    PX-10 (Drawing) ..... 107 15    PX-11 (Deductions Per Pay Period) ... 147 16    PX-12 (Memo Regarding Interim ..... 155 17         Personnel Policies) 18    PX-13 (Memo Regarding Performance .. 156 19         Review Policy) 20 21 22 23</p>

1 (Pages 1 to 4)

**367 VALLEY AVENUE  
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## FREEDOM COURT REPORTING

Page 5	Page 7
<p>1                   RALPH HUDNALL,  2                   The witness, after having first been  3                   duly sworn to speak the truth, the whole truth,  4                   and nothing but the truth, testified as follows:  5                   EXAMINATION  6                   BY MR. COTTLER:  7           <b>Q. Would you state your name, please?</b>  8           A. Full name?  9           <b>Q. Yes.</b>  10           A. Ralph Alexander Hudnall.  11           <b>Q. Spell your last name, please.</b>  12           A. H-u-d-n-a-l-l.  13           <b>Q. Mr. Hudnall, I'm John Cottle, and I</b>  14           <b>represent Victor Smith in this case.</b>  15           A. Yes, sir.  16           <b>Q. I'm going to ask you some questions today</b>  17           <b>about our case. Your answers will be</b>  18           <b>under oath. And do you understand what</b>  19           <b>that means?</b>  20           A. Yes, sir.  21           <b>Q. Now, if I ask you a question that you</b>  22           <b>don't understand or if it's garbled and</b>  23           <b>unclear, if you'll ask me to repeat it, I</b></p>	<p>1           <b>Q. Do you have any dependents?</b>  2           A. One.  3           <b>Q. A child?</b>  4           A. Yes, sir.  5           <b>Q. That lives with you?</b>  6           A. Yes, sir.  7           <b>Q. Okay. Do you have any relatives in Lee</b>  8           <b>County?</b>  9           A. No, sir.  10           <b>Q. What about your wife, does she have any</b>  11           <b>relatives in Lee County?</b>  12           A. I take that back. Our mother-in-law lives  13           with us. So, yes.  14           <b>Q. What is her name?</b>  15           A. Mother-in-law?  16           <b>Q. Yes.</b>  17           A. Lorraine Nehans (phonetic).  18           <b>Q. What is your wife's maiden name?</b>  19           A. Laura Lee Nehans.  20           <b>Q. Do you have any relatives that you know of</b>  21           <b>in the surrounding counties, either you or</b>  22           <b>your wife?</b>  23           A. No, sir.</p>
Page 6	Page 8
<p>1           <b>will do that. Okay?</b>  2           A. Okay.  3           <b>Q. Now, what is your address?</b>  4           A. 812 McLure Avenue, M-c-L-u-r-e, Opelika,  5           Alabama.  6           <b>Q. And your date of birth?</b>  7           A. 6/29/57. I'm sorry. Do you need a zip  8           code?  9           <b>Q. I'm sorry. What?</b>  10           A. Zip code on the address?  11           MR. LIGHTFOOT: He asked if you  12           needed his zip code.  13           <b>Q. No.</b>  14           A. Okay.  15           <b>Q. 6/29 when?</b>  16           A. '57.  17           <b>Q. And what's your Social Security number?</b>  18           A. 231-04-0102.  19           <b>Q. Okay. Are you married, single?</b>  20           A. Married.  21           <b>Q. Okay. Does your wife live with you at the</b>  22           <b>McLure Road address?</b>  23           A. Yes, sir.</p>	<p>1           <b>Q. Are you from Lee County?</b>  2           A. No, sir.  3           <b>Q. Where are you from?</b>  4           A. Originally born?  5           <b>Q. Yes.</b>  6           A. Virginia.  7           <b>Q. Is that where you grew up, in Virginia?</b>  8           A. Yes, sir.  9           <b>Q. Where did you go to school? Let's start</b>  10           <b>with high school. Did you finish high</b>  11           <b>school?</b>  12           A. Yes, sir.  13           <b>Q. Where did you finish?</b>  14           A. Brookfield High School.  15           <b>Q. Where is that?</b>  16           A. Campbell County, Virginia. I guess the  17           zip there is -- Lynchburg is the actual  18           mailing address.  19           <b>Q. And did you go to school after that?</b>  20           A. No, sir, not in Virginia.  21           <b>Q. Okay. Did you go anywhere?</b>  22           A. I attended some trade school.  23           <b>Q. Where were they?</b></p>

2 (Pages 5 to 8)

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## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 9</p> <p>1 A. El Paso, Texas.      2 Q. <b>What kind of courses did you take in trade</b>      3 <b>schools?</b>      4 A. It was for electronic engineering.      5 Q. <b>Did you get a degree?</b>      6 A. No, sir.      7 Q. <b>Do you have any other schools that you've</b>      8 <b>been to?</b>      9 A. No, sir.      10 Q. <b>How long have you lived at 812 McLure?</b>      11 A. I have to think. I think three years.      12 Q. <b>Where did you live before that?</b>      13 A. Immediately?      14 Q. <b>Yes.</b>      15 A. It was also in Opelika. I don't remember      16 the street number. It was Elizabeth      17 Street in Opelika.      18 Q. <b>How long did you live there?</b>      19 A. Not quite six months.      20 Q. <b>Where did you live before that?</b>      21 A. I rented an apartment downtown Auburn.      22 Actually, there were two apartments near      23 the downtown Auburn area. Gay Street, and</p>	<p style="text-align: right;">Page 11</p> <p>1 A. No, sir. Originally born in New Mexico.      2 She -- I guess she would claim El Paso.      3 She moved there when she was young.      4 Q. <b>Okay. To the best of your knowledge, do</b>      5 <b>you have any relatives in Alabama, other</b>      6 <b>than your mother-in-law?</b>      7 A. No, sir.      8 Q. <b>To the best of your knowledge, does your</b>      9 <b>wife have any relatives in Alabama?</b>      10 A. No, sir.      11 Q. <b>You work for a company called Euro-Pro</b>      12 <b>Management Services; is that correct?</b>      13 A. Yes, sir, I believe so.      14 Q. <b>What do you do for them?</b>      15 A. I'm in charge of the testing, making sure      16 that the products are tested in a proper      17 manner.      18 Q. <b>Let's talk about what Euro-Pro does.</b>      19 A. Okay.      20 Q. <b>What kind of business are they in?</b>      21 A. We design and sell a variety of small home      22 appliances; vacuum cleaners, steam      23 cleaners, battery-charged sweepers,</p>
<p style="text-align: right;">Page 10</p> <p>1 I forget the name of the other street.      2 Q. <b>Okay. How long did you live in downtown</b>      3 <b>Auburn?</b>      4 A. Probably six -- No. More than that.      5 Probably more like nine months.      6 Q. <b>Okay. Where did you live before that?</b>      7 A. Petal, Mississippi, P-e-t-a-l.      8 Q. <b>Okay. And how long did you live in Petal,</b>      9 <b>Mississippi?</b>      10 A. About seven years.      11 Q. <b>And at each of those addresses we have</b>      12 <b>talked about, beginning in Petal,</b>      13 <b>Mississippi forward, was your wife with</b>      14 <b>you at each of those locations?</b>      15 A. Yes, except for the rental properties. We      16 were in the process of moving.      17 Q. <b>How long have you been married?</b>      18 <b>(Off-the-Record discussion)</b>      19 A. Twenty-five years.      20 Q. <b>Twenty-five years?</b>      21 A. Yes, sir.      22 Q. <b>Where is your wife from? Is she from</b>      23 <b>Alabama or Virginia?</b></p>	<p style="text-align: right;">Page 12</p> <p>1 kitchen products, you know, toaster ovens,      2 those type things.      3 Q. <b>Do you actually manufacture those products</b>      4 <b>or just design them and have someone else</b>      5 <b>manufacture them?</b>      6 A. We design them. Someone else manufactures      7 them.      8 Q. <b>Okay. Now, the part of the company you</b>      9 <b>work in, what do you -- are you in design,</b>      10 <b>testing?</b>      11 A. Testing.      12 Q. <b>Can you tell me a little bit about what</b>      13 <b>your job description is at this time?</b>      14 A. To ensure all Euro-Pro product is tested      15 in accordance with whatever applicable      16 standards apply to that product.      17 Q. <b>Okay. And how long have you been in that</b>      18 <b>position?</b>      19 A. This position with Euro-Pro?      20 Q. <b>Yes.</b>      21 A. Three and a half years.      22 Q. <b>Now, how long have you worked for</b>      23 <b>Euro-Pro?</b></p>

3 (Pages 9 to 12)

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## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 13</p> <p>1 A. Three and a half years.      2 Q. <b>So you've been in the same position?</b>      3 A. Yes, sir.      4 Q. <b>Who is your supervisor?</b>      5 A. Right now?      6 Q. <b>Yes.</b>      7 A. Chad Reese.      8 Q. <b>Chad Reese?</b>      9 A. Yes, sir.      10 Q. <b>Has he always been your supervisor since you've been employed with Euro-Pro?</b>      11 A. No, sir.      13 Q. <b>Who else has supervised you?</b>      14 A. Terry Robertson.      15 Q. <b>All right. Are both Chad Reese and Terry Robertson still with Euro-Pro?</b>      16 A. No, sir.      18 Q. <b>Who is no longer with Euro-Pro?</b>      19 A. Mr. Robertson.      20 Q. <b>How long has he been gone from Euro-Pro?</b>      21 A. About six months.      22 Q. <b>And is that when your supervisor became Chad Reese?</b></p>	<p style="text-align: right;">Page 15</p> <p>1 management under Mr. Offir?      2 A. I don't completely know.      3 Q. <b>Well, would -- Chad Reese, I assume, would be in that second tier?</b>      4 A. Yes, sir.      6 Q. <b>And where would you fall, in like the third tier?</b>      8 A. Yes, sir.      9 Q. <b>Where did you work before you came to work for Euro-Pro?</b>      10 A. Sunbeam Household Products.      12 Q. <b>Was that in Petal, Mississippi?</b>      13 A. Hattiesburg.      14 Q. <b>And what kind of things did you do for Sunbeam Products?</b>      16 A. At the end of my tenure with Sunbeam?      17 Q. <b>Yeah.</b>      18 A. Same thing.      19 Q. <b>How long did you work for Sunbeam?</b>      20 A. Seven years.      21 Q. <b>Have you ever given a deposition before?</b>      22 A. No, sir.      23 Q. <b>Have you ever sued anyone before?</b></p>
<p style="text-align: right;">Page 14</p> <p>1 A. I believe so. There was some -- a little bit of flux in there with the change.      3 Mr. Robertson left. He got a replacement.      4 The replacement had to figure out who was going to report to who. I believe Chad's been my boss ever since Terry left.      7 Q. <b>Has Terry Robertson been replaced by Chad Reese or by someone else?</b>      9 A. Someone else.      10 Q. <b>Okay. Who else? What's the name of the person who replaced Terry Robertson?</b>      12 A. Yigal Offir, Y-i-g-a-l O-f-f-i-r.      13 Q. <b>Okay. And Mr. Offir has been there about six months?</b>      15 A. About.      16 Q. <b>Is he the person in charge of the Auburn -- Is it Auburn or Opelika where this facility is?</b>      19 A. It's in Auburn.      20 Q. <b>Is Mr. Offir in charge of the Auburn facility?</b>      22 A. Yes, sir.      23 Q. <b>How many people are in the second tier of</b></p>	<p style="text-align: right;">Page 16</p> <p>1 A. No, sir.      2 Q. <b>Have you ever been sued?</b>      3 A. Yes, sir.      4 Q. <b>Tell me about that.</b>      5 A. I had just moved to the Hattiesburg area.      6 A rainy night. I was driving down the road. A guy turned in front of me. We hit. He sued me but -- Well, he sued me.      9 Q. <b>Okay. That was about ten years ago?</b>      10 A. Something like that. Yes, sir.      11 Q. <b>Car wreck case?</b>      12 A. Right.      13 Q. <b>That's the only time you've ever been sued?</b>      15 A. To my knowledge, yes, sir.      16 Q. <b>Okay. Have you ever been arrested or charged with a criminal offense, other than a traffic ticket?</b>      19 MR. LIGHTFOOT: You know what, you don't need to answer about arrested. You can answer as to convicted.      23 A. Okay. Yes.</p>

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 17</p> <p>1 Q. Okay. Tell me what that was for. 2 A. I was involved in a DUI. 3 Q. Anything else you've been convicted of? 4 A. No, sir. 5 Q. When was the DUI? 6 A. Five years ago. 7 Q. Was that in Mississippi or Alabama? 8 A. Mississippi. 9 (Plaintiff's Exhibit 1 marked 10 for purposes of identification) 11 Q. Mr. Hudnall, let me show you what I've 12 marked as Plaintiff's Exhibit 1. This is 13 a deposition notice. Have you seen that 14 document, sir, before today? 15 A. I believe so. Yes, sir. 16 Q. It asks that you bring with you certain 17 things. And it's possible that all that 18 I've asked for here has already been 19 produced. But if you would look on the 20 third page of that document. "The 21 complete personnel file of the plaintiff." 22 Do you have that with you or have I 23 already been given that?</p>	<p style="text-align: right;">Page 19</p> <p>1 A. Not to my knowledge. No, sir. 2 Q. Number 5. "All correspondence between the 3 plaintiff and defendant or any employee of 4 the defendant." Do you have anything like 5 that that you've not already produced? 6 A. No, sir. 7 Q. "The personnel file of Ashley Sheffield." 8 That was produced with some things 9 redacted and omitted. But you don't have 10 anything else on that today? 11 A. No, sir. 12 Q. The same with David Richards. Any other 13 documents from that file did you bring 14 with you? 15 A. No, sir. 16 Q. I asked for the personnel file of the 17 person hired to replace the plaintiff. Do 18 you have -- And I understand -- Actually, 19 you contend that no one was hired to 20 replace the plaintiff. 21 A. That's correct. 22 Q. But there was an individual hired around 23 the time the plaintiff was terminated by</p>
<p style="text-align: right;">Page 18</p> <p>1 A. I believe you've been provided that. 2 Q. Okay. "Documents reflecting any 3 complaints made by any supervisors or 4 co-employees of the plaintiff." Is there 5 anything you have in response to that that 6 you have not already given me? 7 A. No, sir. Not that I've not already given 8 you. 9 Q. Number 3. "Copies of documents reflecting 10 or referencing any exit interview 11 conducted at or near the time the 12 plaintiff was terminated." I have one 13 sheet of notes about that. 14 A. Yes, sir. 15 Q. Is there anything else you know of? 16 A. Not that I know. 17 Q. Number 4. "All employee evaluations of 18 the plaintiff." And I have one. It's a 19 document several pages long. But it 20 appears to be all the same evaluation. 21 A. Okay. 22 Q. Are there any others that you know of that 23 I don't have?</p>	<p style="text-align: right;">Page 20</p> <p>1 the name of Mr. Garrison, I think. Did I 2 say that right? 3 A. Garrison. Yes, sir. 4 Q. What is his -- 5 A. That's the correct pronunciation, I 6 believe. 7 Q. What's his first name? 8 A. Jeffrey. 9 Q. Did you happen to bring his personnel file 10 with you? 11 A. No, sir. He was not hired to replace 12 anybody. He was hired for a new position. 13 (Plaintiff's Exhibit 2 marked 14 for purposes of identification) 15 Q. Let me show you what I've marked here as 16 Plaintiff's Exhibit 2. And this is 17 Defendant's Responses to Plaintiff's First 18 Set of Interrogatories. And I believe 19 you've signed those. Would you just look 20 those over and tell me if you have read 21 that over and if that's your signature on 22 the last page? 23 A. That's my signature. Yes, sir.</p>

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 21</p> <p>1 Q. Okay. Now, you read that over before you 2 signed it?</p> <p>3 A. Oh, yes, sir.</p> <p>4 Q. And are those answers correct and 5 truthful?</p> <p>6 A. I believe so. Yes, sir.</p> <p>7 Q. Now, I want to ask you, Mr. Hudnall, about 8 some -- I guess these are affiliated 9 companies. I don't know. I'll get you to 10 tell me what you know about them. Do you 11 know about a company by the name of 12 Euro-Pro Operating, L.L.C.?</p> <p>13 A. Yes, sir.</p> <p>14 Q. What do they do, and how are they 15 affiliated with Euro-Pro Management 16 Services?</p> <p>17 A. I honestly get confused myself. So I 18 really couldn't -- I really can't say how 19 they are affiliated, which one owns the 20 other. I'm confident I work for Euro-Pro 21 Management. I don't know what the 22 affiliation is for Euro-Pro Operating.</p> <p>23 Q. Do you know what Euro-Pro Operating does</p>	<p style="text-align: right;">Page 23</p> <p>1 A. Do I know anybody? I'd say no, sir. I 2 could probably make guesses, but I'd 3 really rather not.</p> <p>4 Q. You don't know the relationship of any of 5 these companies and how they all fit 6 together?</p> <p>7 A. Not specifically. Correct.</p> <p>8 Q. But is it correct to say, that as to the 9 Auburn facility where you work now and 10 where Mr. Victor Smith used to work, that 11 everyone in that facility is an employee 12 of Euro-Pro Management Services, Inc.?</p> <p>13 A. I believe so. Yes.</p> <p>14 Q. Do you know if Euro-Pro Management 15 Services -- it's not a publicly traded 16 company, is it?</p> <p>17 A. That's correct. It's not.</p> <p>18 Q. It's privately owned?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Do you know who owns it?</p> <p>21 A. The family that owns it is Rosenzweig. I 22 don't know now what percentage they own. There are other investors.</p>
<p style="text-align: right;">Page 22</p> <p>1 different from Euro-Pro Management?</p> <p>2 A. No, sir.</p> <p>3 Q. Do you know anybody that works for 4 Euro-Pro Operating?</p> <p>5 A. I don't think so.</p> <p>6 Q. Okay. Have you ever heard of a company 7 called Stan-Pro E.P. Corporation?</p> <p>8 A. Not in that specific name.</p> <p>9 Q. Have you heard of a company similar to 10 that?</p> <p>11 A. Stan-Ro.</p> <p>12 Q. Stan-Ro?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Okay. Tell me what you know about 15 Stan-Ro.</p> <p>16 A. Early on in our work -- in my work with 17 Mr. Robertson, we were receiving packages 18 under the name Stan-Ro. Eventually we 19 settled on Euro-Pro. And then there came 20 the Operating and Management, and I never 21 understood which was which.</p> <p>22 Q. Okay. Do you know anybody that works for 23 Stan-Ro Corporation?</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Okay. These other companies that we've 2 talked about that I just named, do you 3 know if any of them are involved in any 4 business, other than the business that 5 Euro-Pro Management is involved in?</p> <p>6 A. No, sir, I don't.</p> <p>7 Q. Where are the headquarters of Euro-Pro? 8 And let me say this: I'm going to use the 9 term "Euro-Pro" to mean the company that 10 you work for.</p> <p>11 A. Okay. Very good.</p> <p>12 Q. And if I -- I want to -- I don't think I'm 13 coming back to any of these other 14 companies. If I do, I'll specify. So if 15 I say "Euro-Pro," we're talking about the 16 company you work for now and that 17 Mr. Smith used to work for.</p> <p>18 A. Very good.</p> <p>19 Q. Okay. Now, where is the headquarters of 20 Euro-Pro?</p> <p>21 A. I would say Boston.</p> <p>22 Q. Do you know how many different plants or 23 facilities Euro-Pro has around the</p>

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 25</p> <p>1      <b>country?</b>  2    A. Around the U.S.?  3    <b>Q. Yes.</b>  4    A. I know of two.  5    <b>Q. All right. Where are they?</b>  6    A. Boston and Alabama.  7    <b>Q. Okay. And the one in Alabama is the one in Auburn?</b>  8    A. Correct.  9    <b>Q. That's the only one in Alabama?</b>  10   A. Yes, sir, to my knowledge.  11   <b>Q. And then there's one in Boston?</b>  12   A. Yes, sir.  13   <b>Q. Does it do essentially the same thing that the Auburn plant does?</b>  14   A. The marketing and sales group, as well as the president, those people stay in Boston.  15   <b>Q. Okay. Do they do design and testing of products?</b>  16   A. No, sir.  17   <b>Q. That's just the management; that's the corporate headquarters, I guess?</b></p>	<p style="text-align: right;">Page 27</p> <p>1    <b>Q. Okay. How many people are employed in the Auburn facility?</b>  2    A. Today?  3    <b>Q. Yes.</b>  4    A. I'm guessing twenty.  5    <b>Q. At the time Victor Smith was hired, which was in December of '03, about how many people worked there at that time?</b>  6    A. When he first came to us?  7    <b>Q. Yes.</b>  8    A. When he first came to us. Okay. I think seven, maybe eight.  9    <b>Q. At the time Victor Smith was terminated, which was in December of '04, approximately how many people worked at the Auburn plant?</b>  10   A. I think maybe fifteen.  11   <b>Q. Could you tell me how many tiers or levels of authority there are at the plant? I mean, you've got one person who's the manager of that facility.</b>  12   A. Right.  13   <b>Q. How many different tiers or levels of</b></p>
<p style="text-align: right;">Page 26</p> <p>1    A. Correct.  2    <b>Q. So all of the design and testing of the products is done at the Auburn facility; is that correct?</b>  3    A. No.  4    <b>Q. Okay. Where else would there be design and testing done?</b>  5    A. I believe -- Well, I know there's some done in Montreal. And that's all -- that's all the company owns is down in Montreal.  6    <b>Q. Okay. I think I got confused. You limited your answer to the U.S., which I think is what I asked you.</b>  7    A. Oh, yes, sir.  8    <b>Q. So you do have a facility in Montreal?</b>  9    A. Yes, sir.  10   <b>Q. Is there anywhere else in the world that you know of that Euro-Pro has a facility other than Boston, Montreal and Auburn?</b>  11   A. We have offices in China.  12   <b>Q. Okay.</b>  13   A. Hong Kong and China.</p>	<p style="text-align: right;">Page 28</p> <p>1    <b>authority are there below the plant manager?</b>  2    A. Now?  3    <b>Q. Yes.</b>  4    A. At our facility itself?  5    <b>Q. Yes.</b>  6    A. I think two.  7    <b>Q. Is there a position called lab technician?</b>  8    A. Yes.  9    <b>Q. Where does that fall in the hierarchy?</b>  10   A. It would be the second level.  11   <b>Q. The lowest level?</b>  12   A. The technician level would be the lowest level. But within that level are various levels of technicians.  13   <b>Q. Okay. How many levels of lab tech are there?</b>  14   A. We allow for three.  15   <b>Q. Okay. What are the various jobs -- I mean, we're only talking fifteen to twenty people. What are the various job descriptions -- not job descriptions -- but job titles of the people who work in</b></p>

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 29</p> <p>1      <b>that plant?</b></p> <p>2    A. The specific titles?</p> <p>3    <b>Q. Yeah.</b></p> <p>4    A. There are lab techs. There are -- those</p> <p>5        guys are called lab techs as well and then</p> <p>6        we have project managers.</p> <p>7    <b>Q. Are the project managers over the lab</b></p> <p>8        techs?</p> <p>9    A. Correct.</p> <p>10   <b>Q. Do you have engineers?</b></p> <p>11   A. Those are project managers.</p> <p>12   <b>Q. Okay. How many engineers do you have now?</b></p> <p>13   A. Right now?</p> <p>14   <b>Q. Yes.</b></p> <p>15   A. Let me go around the room. Four.</p> <p>16   <b>Q. How many lab techs do you have now?</b></p> <p>17   A. Three.</p> <p>18   <b>Q. What are the other positions?</b></p> <p>19   A. There are non-supervisory test engineers.</p> <p>20        That would be the only other positions.</p> <p>21        Plus an office manager.</p> <p>22   <b>Q. How many non-supervisory test engineers</b></p> <p>23        are there?</p>	<p style="text-align: right;">Page 31</p> <p>1        something shipped, she ships it. She</p> <p>2        answers the phone and that kind of thing.</p> <p>3    <b>Q. Keeps things on track?</b></p> <p>4    A. Right.</p> <p>5    <b>Q. And then you have some supervisory</b></p> <p>6        personnel? Mr. Offir?</p> <p>7    A. He lives in Boston.</p> <p>8    <b>Q. Oh, okay. Where do you fall into this</b></p> <p>9        hierarchy, Mr. Hudnall?</p> <p>10   A. I consider myself a test engineer.</p> <p>11   <b>Q. Now, what is the difference in the</b></p> <p>12        non-supervisory test engineers and the</p> <p>13        engineers?</p> <p>14   A. The engineer is a project manager. He</p> <p>15        would have the entire property. If we</p> <p>16        were trying to make a court reporter</p> <p>17        machine or something like that, he would</p> <p>18        be responsible for everything that goes on</p> <p>19        to make that machine work, from soup to</p> <p>20        nuts, to say, starting with the concept,</p> <p>21        finishing with the product, coming out of</p> <p>22        the factory door onto a shelf so you can</p> <p>23        buy it. The non-supervisory test</p>
<p style="text-align: right;">Page 30</p> <p>1    A. Probably three or four. Probably three.</p> <p>2    <b>Q. So that's four engineers, three lab techs,</b></p> <p>3        <b>three or four non-supervisory test</b></p> <p>4        <b>engineers. That's got us up to ten or</b></p> <p>5        <b>eleven. What do the other people do?</b></p> <p>6    A. I've got to go around the room again. All</p> <p>7        right. I said four engineers?</p> <p>8    <b>Q. Yeah.</b></p> <p>9    A. All right. Let me count them off in my</p> <p>10        mind. I've got him. I'm sorry. There's</p> <p>11        five actual engineers.</p> <p>12   <b>Q. Okay.</b></p> <p>13   A. Five techs. Forgot a couple. I guess</p> <p>14        it's less than I thought it was. A few</p> <p>15        people have left in the last couple of</p> <p>16        weeks. Well, I'll say the last few weeks.</p> <p>17        Five engineers, five lab techs, three test</p> <p>18        engineers, and the office manager. That's</p> <p>19        the group.</p> <p>20   <b>Q. Okay. The office manager is --</b></p> <p>21   A. Actually, we call her office manager.</p> <p>22        She's in charge of making sure we have</p> <p>23        pens and pencils and paper. If we need</p>	<p style="text-align: right;">Page 32</p> <p>1        engineers would be an engineer who is then</p> <p>2        required for -- required to conduct the</p> <p>3        test that we made on the machine itself.</p> <p>4    <b>Q. Okay. But the non-supervisory test</b></p> <p>5        <b>engineers are licensed engineers?</b></p> <p>6    A. I'm not -- I don't understand the term</p> <p>7        "licensed engineer." They would have gone</p> <p>8        to school, have a four-year degree, some</p> <p>9        sort of certification saying that.</p> <p>10   <b>Q. All right. Other than maybe secretarial</b></p> <p>11        <b>positions, are there any other positions</b></p> <p>12        <b>at that Auburn plant?</b></p> <p>13   A. We do have right now two temporary people</p> <p>14        working in the Cleanability Group.</p> <p>15   <b>Q. Cleanability?</b></p> <p>16   A. To test the performance of vacuum</p> <p>17        cleaners. We have a couple of temps in</p> <p>18        that group.</p> <p>19   <b>Q. Are they working more or less as lab</b></p> <p>20        <b>technicians?</b></p> <p>21   A. More or less.</p> <p>22   <b>Q. When did Euro-Pro open the Auburn</b></p> <p>23        <b>facility?</b></p>

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 33</p> <p>1 A. I don't know specifically. It would have 2 been sometime in '02.</p> <p>3 <b>Q. Were you there when it opened?</b></p> <p>4 A. No, sir. Let me --</p> <p>5 <b>Q. Go ahead.</b></p> <p>6 A. No, sir. The organization was started in 7 Auburn when I came on board.</p> <p>8 <b>Q. Okay. Were you on board with the</b> 9 <b>organization when Victor Smith was hired?</b></p> <p>10 A. Yes, sir.</p> <p>11 <b>Q. Do you remember when he was hired?</b></p> <p>12 A. I don't remember specifically. He would 13 have come -- he came to us as a temp. It 14 would have been sometime --</p> <p>15 <b>Q. Does December of '03 sound correct?</b></p> <p>16 A. That's when we hired him full-time. 17 That's when we hired him permanently. 18 Yes, sir.</p> <p>19 <b>Q. He came there first as a temp?</b></p> <p>20 A. Yes, sir.</p> <p>21 <b>Q. And that was through some employment</b> 22 <b>agency?</b></p> <p>23 A. That's correct.</p>	<p style="text-align: right;">Page 35</p> <p>1 <b>December of '03, did his job duties change</b> 2 <b>any at that time?</b></p> <p>3 A. Yes, sir.</p> <p>4 <b>Q. And how did they change?</b></p> <p>5 A. We asked him to go to second shift. We 6 had a lot of work to get done. We needed 7 to run two shifts. In order to continue 8 to run a second shift, we needed a 9 permanent person on board at the second 10 shift location. It was either going to be 11 me or somebody else. We thought of hiring 12 Victor, once we saw his resume', his skill 13 levels. We thought this would be a good 14 pick from the group we had to run our 15 second shift. So we offered him a second 16 shift job.</p> <p>17 He was responsible for scheduling the 18 work that had to be done for second and 19 first shift. He was responsible to make 20 sure that we had plenty of -- plenty of 21 things to work with, sand, dirt -- you've 22 got to put something down to vacuum it up 23 -- plenty of that stuff to work with so we</p>
<p style="text-align: right;">Page 34</p> <p>1 <b>Q. Is there one that Euro-Pro regularly uses?</b></p> <p>2 A. It would either have been A-1 or 3 Employment Resources. Those are the two 4 we typically use.</p> <p>5 <b>Q. Is that typically how Euro-Pro hires</b> 6 <b>people?</b></p> <p>7 A. Well, for the Auburn facility, that's how 8 we found our local help.</p> <p>9 <b>Q. What position was Victor Smith hired at?</b></p> <p>10 A. I forget the exact title. He would have 11 been hired as a lead tech -- some sort of 12 a lead tech for the Cleanability Group 13 when he was permanently hired.</p> <p>14 <b>Q. Cleanability is dealing in vacuum</b> 15 <b>cleaners?</b></p> <p>16 A. Vacuum cleaner performance.</p> <p>17 <b>Q. And that would have been when he came to</b> 18 <b>you as a temp?</b></p> <p>19 A. No, sir. As a temp he was -- I'm sorry. 20 As a temp he came in working the vacuum 21 cleaner performance as a tech -- lab tech 22 for vacuum cleaner performance.</p> <p>23 <b>Q. When he was hired as a regular employee in</b></p>	<p style="text-align: right;">Page 36</p> <p>1 could continue to do the testing that 2 needed to be done.</p> <p>3 <b>Q. Well, do I understand that when he was</b> 4 <b>hired in December of '03, that he was</b> 5 <b>placed in charge of the second shift?</b></p> <p>6 A. He was responsible to make sure the second 7 shift was getting the work done that 8 needed to be done, as well as scheduling 9 the work for the next shift the next day.</p> <p>10 <b>Q. So did he have any supervisory authority</b> 11 <b>in that position?</b></p> <p>12 A. Some.</p> <p>13 <b>Q. Can you explain that?</b></p> <p>14 A. He was not authorized to give people time 15 off or not authorized to make any kind of 16 changes as far as schedule goes, things 17 like that. But he was looked at as the 18 lead for the entire group. In that lead 19 role you're looked at -- well, you're the 20 leader of the group.</p> <p>21 <b>Q. How many people worked on that second</b> 22 <b>shift?</b></p> <p>23 A. On the second shift?</p>

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 37</p> <p>1 Q. Yes.    2 A. I think it was Victor and one other guy.    3 Q. The other guy, he was not an engineer?    4 A. No, sir.    5 Q. Now, when did Victor go to the second shift?    6 A. December of '03.    7 Q. Did he work on the second shift the whole time he was there?    8 A. That he was at Euro-Pro?    11 Q. Yes.    12 A. No, sir.    13 Q. When did he move to the first shift?    14 A. It was sometime in the spring of '03, if I remember right.    16 Q. Spring of '04?    17 A. I'm sorry. You're right. '04.    18 Q. That's okay.    19 A. If I remember right, one or two guys either were going back to school or were leaving for one reason or another. The volume of work had been accomplished. We didn't see a need to have a second shift</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. How do you know his job normally requires travel?    2 A. Fair point. The job with Euro-Pro required plenty of travel. I assume that he still travels.    6 Q. Do you know why he left Euro-Pro?    7 A. No, sir.    8 Q. Do you know if he was terminated or if he left on his own?    10 A. I have no idea.    11 Q. Do you know how to get in touch with him?    12 A. Me directly?    13 Q. Yes.    14 A. No, sir.    15 Q. Do you know indirectly how to get in touch with him?    17 A. I don't know. I may -- I may be able to somehow get a message to him, but I don't have a direct way.    20 Q. Do you know if he has an e-mail address?    21 A. No, sir, I don't know.    22 Q. Do you have a phone number?    23 A. No, sir.</p>
<p style="text-align: right;">Page 38</p> <p>1 anymore. So we eliminated the second shift and brought everybody to first. And then we offered Victor another opportunity.    5 Q. When Victor was hired, do you remember what his pay was?    7 A. Hired full-time?    8 Q. Yeah.    9 A. I don't recall. I think it was around 28,000 a year.    11 Q. And who made the decision to hire Victor?    12 A. Terry Robertson.    13 Q. I don't remember if I asked you this or not. But do you know where Terry Robertson is now?    16 A. I know he lives in Colorado. I don't know if -- Right this minute, I don't know if he's in Colorado or traveling. His job normally requires traveling.    20 Q. Do you know who he works for?    21 A. No, sir.    22 Q. Do you know what he does?    23 A. No, sir.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. If you were going to try to get a message to Terry Robertson, how would you do it?    3 A. I think his sons still live in Auburn. I would try to find them.    5 Q. Do you know what their names are?    6 A. Oh, gosh. I don't remember.    7 Q. Do you know what part of Colorado he lives in?    9 A. No, sir.    10 Q. Have you talked to him since he left Euro-Pro?    12 A. We did speak briefly here. He was here for Victor's deposition.    14 Q. Had he left Euro-Pro at that time?    15 A. Yes, sir.    16 Q. Let me ask you about how personnel records are kept at the Euro-Pro facility in Auburn. Does every employee have a file into which goes all of the information about that employee?    21 A. I don't know.    22 Q. Have you looked at Victor Smith's personnel file before this deposition.</p>

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 41</p> <p>1 A. Yes, sir. 2 (Plaintiff's Exhibit 3 marked 3 for purposes of identification)</p> <p>4 Q. Let me show you Plaintiff's Exhibit 3. 5 What is that, please, sir?</p> <p>6 A. It looks like Victor's resume'.</p> <p>7 Q. Would that be in his personnel file?</p> <p>8 A. Yes, sir. 9 (Plaintiff's Exhibit 4 marked 10 for purposes of identification)</p> <p>11 Q. Let me show you Plaintiff's Exhibit 4. 12 What is that, please, sir?</p> <p>13 A. The Position Description for Victor.</p> <p>14 Q. And would that be in his personnel file?</p> <p>15 A. Yes, sir.</p> <p>16 Q. That's a job description of lab tech?</p> <p>17 A. When we first hired Victor. Yes, sir.</p> <p>18 Q. Is that the position he held when he was 19 terminated?</p> <p>20 A. I don't remember. 21 (Plaintiff's Exhibit 5 marked 22 for purposes of identification)</p> <p>23 Q. Let me show you what I've marked as</p>	<p style="text-align: right;">Page 43</p> <p>1 A. Typically, on an annual basis, we give 2 them a formal evaluation. At the same 3 time we try to talk to them all along the 4 way to make sure that they don't get too 5 far off track in what they're trying to 6 get done and making sure they keep their 7 goals in line with the company.</p> <p>8 Q. So there is a formal evaluation done 9 annually?</p> <p>10 A. Yes, sir. At least annually.</p> <p>11 Q. At least annually?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And as a result of that formal evaluation, 14 do you generate this written report that 15 you have there, Plaintiff's Exhibit 5?</p> <p>16 A. Yes, sir.</p> <p>17 Q. So there would be one of those reports on 18 each employee if they had been there a 19 year?</p> <p>20 A. I would think so.</p> <p>21 Q. Should be?</p> <p>22 A. Should be.</p> <p>23 Q. Is there any other method of conducting a</p>
<p style="text-align: right;">Page 42</p> <p>1 Plaintiff's Exhibit 5. Can you identify 2 that for me, please?</p> <p>3 A. This would be an evaluation of Victor 4 given by me.</p> <p>5 Q. If you don't mind, could you flip through 6 all the pages and tell me -- I just want 7 you to confirm that all of those pages are 8 part of the same evaluation.</p> <p>9 A. I believe so. Yes, sir.</p> <p>10 Q. Okay. Is that, to your knowledge, the 11 only evaluation that Victor ever received 12 while he was employed with Euro-Pro?</p> <p>13 A. The only formal one. Yes, sir.</p> <p>14 Q. What is the policy about evaluating 15 employees?</p> <p>16 A. I'm not sure if I understand your 17 question.</p> <p>18 Q. How does Euro-Pro typically evaluate lab 19 technicians?</p> <p>20 MR. LIGHTFOOT: I object to the 21 extent the form speaks for 22 itself. You certainly can 23 answer otherwise.</p>	<p style="text-align: right;">Page 44</p> <p>1 formal evaluation of Euro-Pro employees, 2 other than what is reflected by these 3 forms?</p> <p>4 A. A formal evaluation?</p> <p>5 Q. Yes.</p> <p>6 A. No, sir. Not to my knowledge.</p> <p>7 Q. Now, I understand that if we're talking 8 about informal evaluations, that that 9 could be said to be done every day.</p> <p>10 A. Sure.</p> <p>11 Q. But is there any kind of routine, 12 periodic, informal evaluation that is done 13 with employees?</p> <p>14 A. Not to my knowledge. No, sir.</p> <p>15 Q. Plaintiff's Exhibit 5, that would be a 16 part of Victor's personnel file, correct?</p> <p>17 A. Yes, sir. 18 (Plaintiff's Exhibit 6 marked 19 for purposes of identification)</p> <p>20 Q. Plaintiff's Exhibit 6, what is that?</p> <p>21 A. It looks like a piece -- well, it could be 22 an entire evaluation, but it almost looks 23 like a piece of an evaluation. We</p>

# **FREEDOM COURT REPORTING**

<p>1     certainly talk about what is needed and 2     how he can improve. These are types of 3     things you talk about in an evaluation 4     process.</p> <p>5     <b>Q. Is that an evaluation you did?</b></p> <p>6     A. Yes, sir.</p> <p>7     <b>Q. Is that a part of the evaluation reflected</b></p> <p>8     by Plaintiff's Exhibit 5?</p> <p>9     A. No, sir, I wouldn't think so. No, sir.</p> <p>10    <b>Q. Okay. Those were done at different times?</b></p> <p>11    A. Correct.</p> <p>12    <b>Q. All right. Which one was done first?</b></p> <p>13    A. This shorter one.</p> <p>14    <b>Q. Plaintiff's Exhibit 6?</b></p> <p>15    A. Yes, sir.</p> <p>16    <b>Q. And what's the date of that?</b></p> <p>17    A. May 5th of '04.</p> <p>18    <b>Q. And you did that?</b></p> <p>19    A. Yes, sir.</p> <p>20    <b>Q. And then the next evaluation as shown by</b></p> <p>21    Plaintiff's Exhibit 5, what's the date of</p> <p>22    that?</p> <p>23    A. August 27th of '04.</p>	<p>1     <b>Q. Do you know who prepared that document?</b></p> <p>2     A. Not specifically, no, sir.</p> <p>3     <b>Q. Do you know if it was prepared before or</b></p> <p>4     after Mr. Robertson had his discussion</p> <p>5     with Victor in which he terminated him?</p> <p>6     A. I don't know.</p> <p>7     <b>Q. Have you ever seen that document before?</b></p> <p>8     A. Yes, sir.</p> <p>9     <b>Q. Is that document a part of Victor's</b></p> <p>10    <b>personnel file?</b></p> <p>11    A. I'm not sure. It seems like it should be,</p> <p>12    but I'm not sure.</p> <p>13    (Plaintiff's Exhibit 9 marked 14    for purposes of identification)</p> <p>15    <b>Q. Plaintiff's Exhibit 9, this is some e-mail</b></p> <p>16    messages back and forth between Victor and</p> <p>17    Chad, I guess Chad Reese; is that correct?</p> <p>18    A. Yes, sir.</p> <p>19    <b>Q. Is that something you have seen before?</b></p> <p>20    A. Yes, sir.</p> <p>21    <b>Q. Is that a part of Victor's personnel file?</b></p> <p>22    A. I don't know.</p> <p>23    <b>Q. Are there any other documents that should</b></p>
<p>Page 46</p> <p>1     <b>Q. And you did that one as well?</b></p> <p>2     A. Yes, sir.</p> <p>3     <b>Q. All right.</b></p> <p>4     (Plaintiff's Exhibit 7 marked 5     for purposes of identification)</p> <p>6     <b>Q. I've marked as Plaintiff's Exhibit 7 a</b></p> <p>7     couple of W-2 forms showing Victor's wages</p> <p>8     with Euro-Pro for 2003 and 2004. Is that</p> <p>9     what those documents appear to be to you?</p> <p>10    A. Yes, sir. I believe so.</p> <p>11    <b>Q. Would they be a part of his personnel</b></p> <p>12    file?</p> <p>13    A. I don't know.</p> <p>14    (Plaintiff's Exhibit 8 marked 15    for purposes of identification)</p> <p>16    <b>Q. Okay. Let me show you Plaintiff's Exhibit</b></p> <p>17    8. Do you know what that is?</p> <p>18    A. Yes, sir.</p> <p>19    <b>Q. What is that?</b></p> <p>20    A. I believe it's the -- it's the list of</p> <p>21    things Mr. Robertson was going to discuss</p> <p>22    with Victor on the day that Victor was</p> <p>23    terminated.</p>	<p>Page 48</p> <p>1     be in his personnel file that you know of?</p> <p>2     A. I don't know.</p> <p>3     <b>Q. Do you know if there are files where</b></p> <p>4     employee records are kept other than the</p> <p>5     personnel file?</p> <p>6     A. I don't know, sir.</p> <p>7     <b>Q. If an employee violates a company policy</b></p> <p>8     and some kind of disciplinary action is</p> <p>9     going to be taken, how is that handled?</p> <p>10    A. Each engineer -- I take that back. Each</p> <p>11    project manager has their own group of</p> <p>12    people. They handle their own issues</p> <p>13    themselves.</p> <p>14    <b>Q. Is there a process whereby an employee may</b></p> <p>15    be formally reprimanded or suspended</p> <p>16    without pay, suspended with pay, that sort</p> <p>17    of thing?</p> <p>18    A. I don't know.</p> <p>19    <b>Q. Have you ever known of an employee to be</b></p> <p>20    <b>reprimanded where a notice of that</b></p> <p>21    <b>reprimand was placed in the personnel</b></p> <p>22    <b>file?</b></p> <p>23    A. While at Euro-Pro?</p>

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 49</p> <p>1 Q. Yes.    2 A. I don't recall. No, sir.    3 Q. At any rate, is it correct to say that    4 there are no reprimands or other    5 documented indications of misconduct by    6 Victor Smith in his personnel file?    7 MR. LIGHTFOOT: Object to the    8 form. Object to the    9 characterization. You can    10 answer if you can.    11 A. We had some issues. I would think they    12 would be part of his file.    13 Q. Do you have the documentation that's in    14 his file that reflects what those issues    15 are and how they were handled?    16 MR. LIGHTFOOT: Objection, to the    17 extent it's already been    18 asked and answered. But go    19 ahead.    20 A. I'm sorry. Can you ask it again?    21 Q. Yeah. I'm interested to see any documents    22 that reflect misconduct by Victor Smith    23 while an employee at Euro-Pro, whether it</p>	<p style="text-align: right;">Page 51</p> <p>1 A. Absolutely.    2 MR. LIGHTFOOT: Right.    3 Q. Now, I want to just follow up with one    4 more question along these lines.    5 A. Sure.    6 Q. Is it the practice and procedure of    7 Euro-Pro to place a written -- I'm going    8 to use the word "reprimand," but I don't    9 want -- I don't want that to be a limited    10 word. By "reprimand," I'm meaning any    11 kind of written -- whether it's a    12 handwritten note, typed piece of paper,    13 any kind of notation put in the file to    14 indicate employee misconduct or violation    15 of policy. Is that typical for Euro-Pro    16 to place something in the employee's file    17 when a violation of policy occurs?    18 MR. LIGHTFOOT: Let me just    19 qualify that. As of 2004,    20 right? I mean, that's what    21 you're asking?    22 Q. During the time period from December of    23 '03 to December of '04, was that the</p>
<p style="text-align: right;">Page 50</p> <p>1 be a written reprimand or any other    2 document.    3 A. I would have thought we would have    4 provided them.    5 Q. All right. All I have is that exit    6 interview. Is there anything else you    7 know of that exists?    8 MR. LIGHTFOOT: Let me know if    9 you want me to help.    10 MR. COTTLE: Sure. Go ahead. If    11 y'all have something else.    12 MR. LIGHTFOOT: There's not.    13 There are performance issues    14 raised in the evaluations.    15 There's no formal reprimand.    16 There's a written reprimand,    17 if that's what you're    18 asking. And, Ralph, you can    19 confirm that for him. I'm    20 not aware of any.    21 A. Then, no.    22 Q. And I'm not trying to trick you. I just    23 don't want something to come up later.</p>	<p style="text-align: right;">Page 52</p> <p>1 policy and practice of Euro-Pro, to place    2 some sort of document in an employee's    3 file if they violated a policy?    4 A. Not that I'm aware of.    5 Q. Okay. Is it now the policy of Euro-Pro to    6 do that?    7 A. Again, I don't know.    8 Q. Have you ever known an employee that got,    9 quote, written up for some violation of    10 policy or misconduct?    11 A. No, sir.    12 Q. These evaluations that you do, such is    13 shown in Plaintiff's Exhibit 5, what are    14 they used for?    15 A. It's a tool to help management and the    16 employee understand where they are with    17 respect to how -- performing the company's    18 goals, helping getting the employee    19 aligned with the company's goals so they    20 can become a better employee.    21 Q. Would they be used in determining who got    22 a raise, who got a bonus, et cetera?    23 A. It could have some effect on that. Yes,</p>

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 53</p> <p>1       sir.</p> <p>2 <b>Q.</b> And how many people were you responsible 3       for evaluating?</p> <p>4       A. At this time?</p> <p>5 <b>Q.</b> In 2003, 2004.</p> <p>6       A. I think five. There may have been more, 7       but I think it was five.</p> <p>8 <b>Q.</b> When Victor began working for Euro-Pro, 9       who was his supervisor?</p> <p>10      A. I was.</p> <p>11     <b>Q.</b> Did you remain his supervisor throughout 12       his tenure there?</p> <p>13      A. Yes, sir.</p> <p>14     <b>Q.</b> Who were the other lab techs?</p> <p>15      A. James Pierce, Ashley Sheffield, Andres 16       Simon, and later on David Richards, and of 17       course Victor.</p> <p>18     <b>Q.</b> David?</p> <p>19      A. Richards.</p> <p>20     <b>Q.</b> Richards?</p> <p>21      A. Yes, sir.</p> <p>22     <b>Q.</b> Are any of these people still employees of 23       Euro-Pro?</p>	<p style="text-align: right;">Page 55</p> <p>1       <b>Q.</b> Duvell?</p> <p>2       A. Robinson. Lab tech.</p> <p>3       <b>Q.</b> Okay. When was Duvell Robinson an 4       employee?</p> <p>5       A. I don't remember when he was hired 6       permanently. I don't know specifically 7       when he was hired temporarily. I would 8       think somewhere mid-2004 -- I'm sorry, 9       mid-2003 hired temporarily and sometime 10       after that hired permanently.</p> <p>11      <b>Q.</b> Okay. Is Duvell Robinson black?</p> <p>12      A. Yes, sir.</p> <p>13      <b>Q.</b> What about the other lab techs that you 14       named, are any of them black?</p> <p>15      A. No, sir.</p> <p>16      <b>Q.</b> Are they all white?</p> <p>17      A. I don't know how you would characterize 18       somebody from Hungary. I guess white. 19       But everybody else is.</p> <p>20      <b>Q.</b> If you would, Mr. Hudnall, look at 21       Plaintiff's Exhibit -- I think it's 22       Plaintiff's 6. This was done by you?</p> <p>23      A. Yes, sir.</p>
<p style="text-align: right;">Page 54</p> <p>1       A. David Richards is.</p> <p>2 <b>Q.</b> Have all of the others, James Pierce, 3       Ashley Sheffield, Andres Simon, have they 4       left the employment of Euro-Pro?</p> <p>5       A. Yes, sir.</p> <p>6 <b>Q.</b> When did Ashley Sheffield leave the 7       employment of Euro-Pro?</p> <p>8       A. Within the last couple of weeks.</p> <p>9 <b>Q.</b> Was she terminated, or did she leave 10       voluntarily?</p> <p>11      A. She left voluntarily.</p> <p>12 <b>Q.</b> Of the project managers in 2003, 2004, 13       what was the racial make-up of the project 14       managers?</p> <p>15      A. Pardon?</p> <p>16 <b>Q.</b> The racial make-up.</p> <p>17      A. They were all white.</p> <p>18 <b>Q.</b> What about in, again, the time period 19       2003, 2004, what was the racial make-up of 20       the lab technicians?</p> <p>21      A. I did forget one.</p> <p>22 <b>Q.</b> Okay.</p> <p>23      A. Duvell Robinson.</p>	<p style="text-align: right;">Page 56</p> <p>1       <b>Q.</b> You reviewed this with Victor?</p> <p>2       A. Yes, sir.</p> <p>3       <b>Q.</b> And you both signed it in May of 2004?</p> <p>4       A. Correct.</p> <p>5       <b>Q.</b> Now, at this time Victor would have been 6       there roughly six months, right?</p> <p>7       A. More or less. Yes, sir.</p> <p>8       <b>Q.</b> Did you prepare this?</p> <p>9       A. Yes, sir.</p> <p>10      <b>Q.</b> And this was the first formal evaluation 11       you had done of Victor Smith?</p> <p>12        MR. LIGHTFOOT: Objection. I 13        think he testified this was 14        more informal.</p> <p>15        THE WITNESS: Right.</p> <p>16        MR. LIGHTFOOT: Go ahead.</p> <p>17      <b>Q.</b> Okay. Well, written evaluation.</p> <p>18      A. Okay. Yes.</p> <p>19      <b>Q.</b> And at that time it was your opinion that 20       he eagerly takes on new responsibilities?</p> <p>21      A. Yes, sir.</p> <p>22      <b>Q.</b> Help to develop and assemble new Life test 23       setups?</p>

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 57</p> <p>1 A. Yes, sir.</p> <p>2 Q. <b>He demonstrated the ability to complete</b> 3 <b>assigned tasks?</b></p> <p>4 A. Yes, sir.</p> <p>5 Q. <b>It says -- I'm not going to go down</b> 6 <b>through all these, but I'm just going to</b> 7 <b>pick out a few of them. And if there's</b> 8 <b>something more you want to add about this</b> 9 <b>that you remember, I'd like for you to</b> 10 <b>comment. But you indicate that he seeks</b> 11 <b>help when needed and is able to use the</b> 12 <b>information to complete testing</b> 13 <b>requirements. Are those your words?</b></p> <p>14 A. Yes, sir.</p> <p>15 Q. <b>And he had shown the ability to take</b> 16 <b>assigned tasks to the next level of work.</b></p> <p>17 A. He was starting to show that. Yes, sir.</p> <p>18 Q. <b>And then you've got a list of things where</b> 19 <b>he can improve?</b></p> <p>20 A. Correct.</p> <p>21 Q. <b>And goals to meet?</b></p> <p>22 A. (Witness nods head in the affirmative).</p> <p>23 Q. <b>And I see in here there's one -- I want to</b></p>	<p style="text-align: right;">Page 59</p> <p>1 -- You know, obviously, physical 2 confrontations cannot go on. And as well, 3 that it may help him to kind of tone 4 himself down a little bit in communicating 5 with his other workers, so that they know 6 he's not being belligerent or obnoxious or 7 anything like that. Not that he was, but 8 just so they wouldn't take that tone.</p> <p>9 Q. <b>Did you observe this confrontation or did</b> 10 <b>you get the report second or thirdhand?</b></p> <p>11 A. Secondhand.</p> <p>12 Q. <b>Did you ever observe Victor being</b> 13 <b>disrespectful yourself to any co-employee</b> 14 <b>or supervisor?</b></p> <p>15 A. Yes, sir.</p> <p>16 Q. <b>Tell me about that.</b></p> <p>17 A. There was at least one instance where we 18 were discussing company policy, Victor and 19 I, whether he should be discussing 20 compensation with other employees, in 21 which case he got very upset and started 22 cursing. Voices on both sides were 23 raised, which is my fault. But voices on</p>
<p style="text-align: right;">Page 58</p> <p>1 go down to the paragraph labeled 2 "Interaction with Co-workers." When 3 communicating with Cleanability crew, make 4 sure you address them as peers and with 5 respect. Take time to speak carefully and 6 in a level tone. Make sure to listen 7 fully and then answer. Put yourself in 8 their shoes.</p> <p>9 Is there some -- was there some 10 incident or series of incidents which 11 caused you to include this observation 12 into this evaluation?</p> <p>13 A. Yes, sir.</p> <p>14 Q. <b>What was that?</b></p> <p>15 A. We had been getting some complaints about 16 Victor not respecting his peers, 17 respecting the people that worked for him, 18 if you could say they worked for him. It 19 was just a general tone. There was one 20 specific instance that -- the way it was 21 reported to me, a near fight broke out. I 22 wanted to make sure that we covered that; 23 that we don't allow that kind of stuff in</p>	<p style="text-align: right;">Page 60</p> <p>1 both sides were raised. Later, when we 2 discussed the same incident with 3 Mr. Robertson, again after that, Victor 4 took the time and told me he still didn't 5 agree with the policy. So, again, showing 6 that he was disrespectful to either the 7 rank, or myself, or Mr. Robertson, or his 8 rank or the company in general.</p> <p>9 Q. <b>Okay. That involved, I think, an incident</b> 10 <b>where he was discussing a bonus with other</b> 11 <b>co-employees; is that correct?</b></p> <p>12 A. Something to that effect. Either bonus or 13 a compensation of some matter.</p> <p>14 Q. <b>And let me ask this: Was there any policy</b> 15 <b>that had been made known to the employees</b> 16 <b>that they were not supposed to discuss</b> 17 <b>these issues with each other?</b></p> <p>18 A. I don't know if the policy had already 19 been made. However, it was a general 20 managerial concept within the managerial 21 group that you don't discuss these things.</p> <p>22 Q. <b>You don't know whether that had been</b> 23 <b>communicated formally to the employees,</b></p>

15 (Pages 57 to 60)

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## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 61</p> <p>1        though?</p> <p>2    A. No, sir.</p> <p>3    Q. Once that was made known to Victor, he 4        expressed that he disagreed with it?</p> <p>5    A. Extremely.</p> <p>6    Q. Did he violate the policy, though, after 7        it was made known to him?</p> <p>8    A. Not that I'm aware of.</p> <p>9    Q. The first item under "Improvements/Goals," 10      it says, "Make sure any and all issues 11      arising from the Life testing gets 12      reported to the appropriate 13      Technician/Engineer team immediately." 14      Was there some incident which caused 15      you to include that in this evaluation?</p> <p>16    A. We wanted Victor to have more of a 17      hands-on approach to making sure that he 18      was -- he took control of the testing. 19      Part of that is not just turning the 20      equipment on, but actually making sure the 21      unit's working right. There would be 22      instances where either I would go out or 23      somebody else would go out and then report</p>	<p style="text-align: right;">Page 63</p> <p>1    A. Well, when I say "turn the machine on," 2      turn the machine on that tests the 3      product. But when we have a problem with 4      the product, that problem needs to be 5      relayed back to the appropriate team 6      immediately.</p> <p>7    Q. So you'll know what the problem is and can 8      address it?</p> <p>9    A. Correct.</p> <p>10   Q. In your opinion, was that not always being 11      done?</p> <p>12   A. Correct.</p> <p>13   Q. At least not done in a timely way?</p> <p>14   A. That's correct.</p> <p>15   Q. Okay. So you talked with him about that 16      at this first evaluation?</p> <p>17   A. Yes, sir.</p> <p>18   Q. "Remain more focused on current assigned 19      projects. Refrain from adding yourself to 20      conversations and projects until asked in. 21      This doesn't mean only speak when spoken 22      to; just make sure you are needed before 23      joining discussions. The problem is, this</p>
<p style="text-align: right;">Page 62</p> <p>1        back to me that this particular machine -- 2      this particular product is not operating 3      properly. How long has it been that way? 4      Has it been reported back to the group 5      that's responsible for it? And the answer 6      was almost usually no, that nobody knew 7      about it. With that statement, I was 8      trying to get Victor to understand that 9      it's more than just turning the machine 10      on. You've got to make sure the units are 11      working right. If they're not working 12      right, get it back to the design group so 13      they can make a correction as soon as 14      possible.</p> <p>15   Q. Now, the machine that we're talking about 16      here are machines that test the products 17      that Euro-Pro makes or designs?</p> <p>18   A. That's a good -- that's a fair way of 19      putting it. Yes.</p> <p>20   Q. We're not talking about the machines that 21      actually are sold to the public, but the 22      machines that you use to test those 23      products?</p>	<p style="text-align: right;">Page 64</p> <p>1        is one way to get yourself overloaded, and 2      it can appear as if you don't have enough 3      to keep busy."</p> <p>4        Is there something that happened that 5      caused you to include this remark in this 6      evaluation?</p> <p>7    A. That was a general -- Generally, I would 8      notice and other managers would notice 9      that there would be a group of people 10      talking and Victor would be in the group. 11      Now, I don't know if anybody talked to 12      anyone else. I know the people would 13      bring the issue to me, that your guy is 14      out here talking and not doing what he's 15      supposed to be doing. I was trying to get 16      -- This was also in the transition from 17      the Cleanability into the Life testing. 18      And I do note that later on. It's very 19      easy for -- This is my old boss. It's 20      easy for me to go to the old boss for an 21      issue. But that group needed to 22      understand they come to me. So in order 23      to clean Victor's time up and give him as</p>

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 65</p> <p>1 much time to do the job he needed to do, I 2 needed to make sure that he only enjoined 3 in the conversations that were critical to 4 his performance.</p> <p>5 <b>Q. Okay. So at the time this was going on,</b> 6 <b>Victor was in transition from one job duty</b> 7 <b>to another?</b></p> <p>8 A. In a manner of speaking. I like to just 9 draw a line in the sand and say from now 10 on you do this. The real world is, he has 11 knowledge of something that somebody else 12 was doing yesterday that he could probably 13 help with.</p> <p>14 Q. <b>"Strive to become more independent and</b> 15 <b>self-reliant in your day-to-day work."</b> 16 <b>Now, was there anything in particular that</b> 17 <b>caused you to include this observation in</b> 18 <b>the evaluation?</b></p> <p>19 A. There were times when it seemed, 20 especially with Brian, that -- and, again, 21 I got complaints from this end -- that 22 Victor would be in the guy's -- in certain 23 people's office. It's hard to say too</p>	<p style="text-align: right;">Page 67</p> <p>1 <b>Exhibit 5 if we could. Now, as I</b> 2 <b>understand it, this is the formal review</b> 3 <b>or evaluation done on Victor Smith?</b></p> <p>4 A. Yes, sir.</p> <p>5 Q. <b>And it indicates that you are the primary</b> 6 <b>reviewer and that Terry Robertson is the</b> 7 <b>secondary reviewer?</b></p> <p>8 A. That's correct.</p> <p>9 Q. <b>Could we take that to mean that both you</b> 10 <b>and Mr. Robertson agree and are in accord</b> 11 <b>with what this review indicates?</b></p> <p>12 A. Yes, sir.</p> <p>13 Q. <b>Now, I think, before I go through this, I</b> 14 <b>want to back up just a moment and ask you</b> 15 <b>about Victor's employment and the change</b> 16 <b>that he underwent sometime in the spring</b> 17 <b>or later of 2004.</b></p> <p>18 A. Okay.</p> <p>19 Q. <b>He was moved from one job to another, so</b> 20 <b>to speak; is that correct?</b></p> <p>21 A. Yes, sir.</p> <p>22 Q. <b>And do you know about what time that</b> 23 <b>happened?</b></p>
<p style="text-align: right;">Page 66</p> <p>1 much. It's really difficult to delineate 2 how much time is too much and how much is 3 not. But when the person comes to me and 4 complains, I can't get my work done 5 because this guy -- then you've got to 6 start getting yourself away from that 7 person and start finding other ways to do 8 things.</p> <p>9 Q. <b>Okay. When you went through these issues</b> 10 <b>with Victor, what was his response?</b></p> <p>11 A. He accepted all of it. As it's indicated, 12 there's a place for him to comment. And 13 he signed it without commenting, so he 14 accepted everything.</p> <p>15 Q. <b>Would it be fair to say that at the time</b> 16 <b>that you met with Victor after this first</b> 17 <b>evaluation, that there were no issues that</b> 18 <b>were placing his job in jeopardy at that</b> 19 <b>time?</b></p> <p>20 A. Not at that time. But there were some 21 seeds sprouting. 22 (Brief recess)</p> <p>23 Q. <b>Mr. Hudnall, let's go to Plaintiff's</b></p>	<p style="text-align: right;">Page 68</p> <p>1 A. Not specifically. I think around April or 2 May.</p> <p>3 Q. <b>Okay. Well, we'll just say the spring of</b> 4 <b>'04. Okay?</b></p> <p>5 A. I think that's fair. Yes, sir.</p> <p>6 Q. <b>Tell me what he was doing and then what he</b> 7 <b>got moved to doing.</b></p> <p>8 A. Okay. As I said before, he was in charge 9 -- he was the lead tech for our 10 Cleanability Group. He was the permanent 11 employee on site during our second shift 12 operation, making sure that the testing 13 that was required to be done at night was 14 conducted efficiently -- or the testing 15 was conducted, and making sure that the 16 status for the next morning's testing was 17 set up so that the people that came on on 18 the morning shift could go ahead and run 19 their work.</p> <p>20 He was responsible to make sure we 21 had enough materials to do the testing. 22 As I said, you put down specific types of 23 sand or rice or just different dirts or</p>

17 (Pages 65 to 68)

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## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 69</p> <p>1       soils, we'll say, and then you vacuum them    2       up. I'm sure there are other things to go    3       along with that. But, basically, he was    4       to make sure that the vacuum performance    5       group could operate, all the lab techs and    6       temporaries under him could perform their    7       functions.</p> <p>8       <b>Q. Okay. All right. So that's what he was</b>    9       <b>doing, was Cleanability?</b></p> <p>10      A. Correct.</p> <p>11      <b>Q. Now, he was taken off that and placed on</b>    12      <b>another project, correct?</b></p> <p>13      A. Right. Like I said, the reason for the    14       second shift was, we had a huge amount of    15       work to get done. It just made more sense    16       to run two shifts instead of one. It    17       worked out better for some of the    18       employees, some of the guys that were    19       working there, because they worked better    20       on the night shift than during the    21       daytime.</p> <p>22       We started having trouble keeping the    23       second shift full, plus the workload</p>	<p style="text-align: right;">Page 71</p> <p>1       the end of the Life test, if the unit does    2       fail, to make sure that it fails in a safe    3       manner so that it doesn't literally blow    4       up while you're trying to vacuum your    5       house and catch your house on fire, those    6       types of things, as well as evaluating the    7       product during the design process to see    8       if there are things we can make to make it    9       an even better product. Various things    10       come out of that, comes out of that Life    11       testing that most companies do to    12       determine. Are you making a safe product?    13       Is it reliable? Will the consumer get a    14       good value for it? Can we continue to    15       stay in business, basically?</p> <p>16      <b>Q. So when you say Life testing, the term</b>    17      <b>"Life" refers to the life of the product?</b></p> <p>18      A. Correct.</p> <p>19      <b>Q. All right. What job was Victor given when</b>    20      <b>he moved into Life testing?</b></p> <p>21      A. When he moved into it, he was responsible    22       for the entire maintenance of everything    23       on tests. I'm not sure if we even had</p>
<p style="text-align: right;">Page 70</p> <p>1       required on the night shift was not    2       necessary anymore. The workload wasn't    3       there anymore. So the night shift really    4       wasn't necessary. We brought all the    5       people back to the daytime shift. And    6       then we offered Victor the position to    7       move into the Life test area, which really    8       is where I got my start.</p> <p>9       <b>Q. What is the Life test area?</b></p> <p>10      A. As I said, Euro-Pro makes a variety of    11       products, from typical vacuum cleaners,    12       portable steam cleaners, clothes irons,    13       hand mixers, toaster ovens, a variety of    14       stuff. Part of that process -- Any    15       responsible manufacturer will conduct what    16       we call Life testing. We are trying to --    17       We do two things -- well, several things    18       in this business. We are trying to    19       evaluate how well the product works over    20       the course of its lifetime, making sure    21       that the consumer gets a fair value for    22       their money when they buy the product, as    23       well as -- At the end of the process, at</p>	<p style="text-align: right;">Page 72</p> <p>1       anything on tests at that time, other than    2       a few things I had been able to cobble    3       together. So his main responsibility was    4       to start building the fixtures to allow us    5       to put units on test so that they could    6       run in an automated fashion, as opposed to    7       having -- Say, for a clothes iron, instead    8       of having to have somebody there to push    9       the iron back and forth and turn it on and    10       fill it up with water and do all the    11       things you need to do for a clothes iron,    12       it would have been Victor's    13       responsibility. And I'm using clothes    14       iron. But now that I think about it, we    15       didn't install irons until later.</p> <p>16       For a deep fryer, for example,    17       something he did have involvement with, he    18       would put the oil in. He would set up a    19       system to turn that deep fryer on and off    20       per our own specifications and record the    21       number of times the unit was turned on; to    22       make sure that when it came on, it    23       actually was working and heating oil.</p>

18 (Pages 69 to 72)

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## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 73</p> <p>1 It's not necessarily to cook in it, but    2 make sure it's getting hot. Make sure    3 that the fixture itself is under no    4 duress; that we wire that up properly;    5 that we build that properly so that we    6 don't start fires while somebody is over    7 here in the corner of the room testing    8 something else and this deep fryer doesn't    9 catch on fire. It's a big job, but it was    10 a job we felt Victor was very qualified to    11 do. And actually, as I've said, it's    12 where I got my start into my field now, is    13 in the same position.</p> <p>14 <b>Q. Do I understand you to say he was offered    15 that position, or was he told, "This is    16 your new position?"</b></p> <p>17 A. The actual verbiage does escape me. We    18 probably said it in the manner of "We    19 would like you to move into this    20 position," and trying to build him up to    21 say that -- to make him understand that    22 this would really be a valuable position    23 for not only Euro-Pro, but for himself and</p>	<p style="text-align: right;">Page 75</p> <p>1 steam inside the unit, to press the    2 trigger or whatever actuation you have in    3 order to release that steam. Do that a    4 few times, and once you've exhausted all    5 the steam, then the unit has got to go    6 into an automatic shut-down phase to cool    7 down. After that, then you bring more    8 water in and repeat the process over    9 again.</p> <p>10 <b>Q. So the fixture is sort of a machine that    11 operates the steam cleaner?</b></p> <p>12 A. Yes, sir.</p> <p>13 <b>Q. And puts it through a process where it's    14 used over and over again in probably a    15 short period of time?</b></p> <p>16 A. Exactly.</p> <p>17 <b>Q. In a shorter period of time than it would    18 naturally be used around the house?</b></p> <p>19 A. That's correct.</p> <p>20 <b>Q. And, so, by doing that, I guess you can    21 simulate how long the product may last if    22 it were only used like it would normally    23 be used in a household?</b></p>
<p style="text-align: right;">Page 74</p> <p>1 his own growth. I would never tell    2 somebody either this or the door. There's    3 always something else that a valuable    4 employee can do for a company besides that    5 specific thing you ask them to do.</p> <p>6 <b>Q. Now, the Life testing unit, was there some    7 kind of a steam cleaner that was going to    8 have to be tested in this division?</b></p> <p>9 A. Yes, sir. We are the market leader in    10 portable steam cleaners. As such, it's    11 imperative that we get some sort of a    12 steam cleaner fixture built and running.</p> <p>13 <b>Q. What do you mean a "steam cleaner    14 fixture"?</b></p> <p>15 A. "Fixture" being my own term, for the    16 method whereby you can then take your    17 steam cleaner, install it in this fixture,    18 and then all of the operation of the steam    19 is automatic. It fills by itself. Once    20 it's in the fixture, it fills by itself.    21 Then you cap that off. You have to then    22 close your system back so you can heat and    23 make steam. Then when it starts to make</p>	<p style="text-align: right;">Page 76</p> <p>1 A. Correct. And as you said, if we gave a    2 three-year warranty, we want to try to do    3 that three years in as few weeks as    4 possible.</p> <p>5 <b>Q. Okay. So as the head of the Life testing    6 division, would they be responsible for    7 designing and building this machine, the    8 testing machine?</b></p> <p>9 A. I'm not sure what you mean by "head of the    10 Life testing."</p> <p>11 <b>Q. Well, who was -- I thought you said Victor    12 was going to head up the Life testing    13 division?</b></p> <p>14 A. He was going to be our test technician in    15 the Life testing room. Correct.</p> <p>16 <b>Q. Okay. The test technician. Would he be    17 responsible for designing and building the    18 device that did the testing?</b></p> <p>19 A. Yes, sir.</p> <p>20 <b>Q. And did you explain that to him?</b></p> <p>21 A. Yes, sir.</p> <p>22 <b>Q. And did he take the position?</b></p> <p>23 A. Yes, sir.</p>

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 77</p> <p>1 Q. And this was sometime April, May of 2004?</p> <p>2 A. Yes, sir.</p> <p>3 Q. This was after he was moved to the first</p> <p>4 shift -- excuse me -- after the second</p> <p>5 shift shut down?</p> <p>6 A. That's correct.</p> <p>7 Q. But I guess the fact that the second shift</p> <p>8 shut down is not -- is that related to why</p> <p>9 you asked him to move to Life testing?</p> <p>10 A. Well, the second shift was closing up. We</p> <p>11 were trying to find a position that he</p> <p>12 would be happy with. And I needed help.</p> <p>13 So that was my first thought. You know,</p> <p>14 we looked at his resume'. We looked at</p> <p>15 his experiences. It seemed like he had</p> <p>16 plenty of education and plenty of</p> <p>17 experience to do the job. So we</p> <p>18 approached him, "Would you like to take</p> <p>19 this challenge?"</p> <p>20 Q. Now, as far as designing the devices that</p> <p>21 do the testing, did he have any experience</p> <p>22 in doing that?</p> <p>23 A. I don't think he did.</p>	<p style="text-align: right;">Page 79</p> <p>1 of '04?</p> <p>2 A. I think so. Yes, sir.</p> <p>3 Q. Now, this document, Plaintiff's Exhibit 5,</p> <p>4 is an evaluation. This was done in -- it</p> <p>5 says the review date is August 27, '04 for</p> <p>6 a period ending June of '04. Can you</p> <p>7 explain the difference in those two dates,</p> <p>8 please?</p> <p>9 A. By the time we actually write the review</p> <p>10 and Mr. Robertson gets a chance to review</p> <p>11 my comments and we add our comments</p> <p>12 together, it just -- his travel schedule,</p> <p>13 my schedule, it just took a little time to</p> <p>14 get the -- by the time I wrote it, to get</p> <p>15 it approved and get it actually issued.</p> <p>16 This was the date -- this should have been</p> <p>17 the date we discussed it or very shortly</p> <p>18 thereafter. Victor and I discussed it on</p> <p>19 this date or very shortly thereafter.</p> <p>20 Q. On which date?</p> <p>21 A. I'm sorry. August 27.</p> <p>22 Q. So would it be correct to say that what's</p> <p>23 contained in this report was your</p>
<p style="text-align: right;">Page 78</p> <p>1 Q. Did you discuss that with him or did he</p> <p>2 discuss that with you?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And what do you recall was said about</p> <p>5 that?</p> <p>6 A. I've got at least fifteen years doing the</p> <p>7 same thing. That I can help him in</p> <p>8 whatever comes up. I've done it. Chad</p> <p>9 Reese has done it. We have other guys who</p> <p>10 can help. We can use those resources, and</p> <p>11 that could help him over any hurdles he</p> <p>12 may have. But at the same time, we were</p> <p>13 not going to do the job for him. We were</p> <p>14 not going to build the fixtures for him.</p> <p>15 We were going to give him advice as to how</p> <p>16 he could build a fixture, but the ultimate</p> <p>17 construction would be his only</p> <p>18 responsibility --</p> <p>19 Q. Okay.</p> <p>20 A. -- that's necessary for the performance of</p> <p>21 his duties.</p> <p>22 Q. All right. So that change in his</p> <p>23 employment status took place in the spring</p>	<p style="text-align: right;">Page 80</p> <p>1 appraisal of Victor Smith as of August 27,</p> <p>2 '04?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. Now, as far as in the area of</p> <p>5 "Job/Knowledge/Competency," your</p> <p>6 evaluation at that time was that his</p> <p>7 performance met standards in all important</p> <p>8 aspects; a good contributor?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And this is some several months after he</p> <p>11 had been moved to the Life testing unit?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Or Life testing division.</p> <p>14 The next area is "Quality and</p> <p>15 Quantity of Work." And there you</p> <p>16 indicated that his performance was well</p> <p>17 above standards in many important aspects,</p> <p>18 correct?</p> <p>19 A. Yes, sir.</p> <p>20 Q. The third area is "Dependability," in</p> <p>21 which you indicated his performance</p> <p>22 consistently and significantly was above</p> <p>23 standards in virtually all areas, correct?</p>

20 (Pages 77 to 80)

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## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 81</p> <p>1 A. Yes, sir.</p> <p>2 Q. Now we move to "Teamwork and Cooperation," 3 which is the next area. And there 4 Victor's performance met the standards in 5 all important aspects; good contributor. 6 That was your opinion at that time?</p> <p>7 A. Yes, sir.</p> <p>8 Q. "Interpersonal and Communication Skills." 9 Again, you rated his performance as 10 meeting the standards in all important 11 aspects, correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And then "Initiative/Commitment." In that 14 area you rated his performance as meeting 15 the standards in all important aspects; 16 good contributor?</p> <p>17 A. Yes, sir. That he met the minimum 18 standards.</p> <p>19 Q. Okay. Then we go to, I guess, some more 20 particular observations. And you indicate 21 that his main strength is building test 22 fixtures. So he had been working on this 23 steam cleaning fixture; is that right?</p>	<p style="text-align: right;">Page 83</p> <p>1 is constantly changing and growing. Is 2 there anything in particular that caused 3 you to make that observation?</p> <p>4 A. Several things. The room he was working 5 in was a large area and it's his area. We 6 tried to make it very clear it was his 7 responsibility to make sure that the area 8 was kept neat and tidy. It didn't 9 necessarily mean he had to go and sweep up 10 everything that was put on the floor. It 11 was okay with me if he went and got 12 somebody else and said, "Hey, you made 13 this mess, so help me clean it up." But 14 at the same time it's also important to 15 point out that Mr. Robertson, whose title, 16 I believe, was executive vice-president, 17 was not afraid to pick up a broom and 18 sweep himself. So if he's setting that 19 example, then it's pretty obvious that 20 everybody in the group needs to be 21 cleaning up. And Victor seemed to have a 22 specific problem with that specific part 23 of the duties, just keeping the area neat</p>
<p style="text-align: right;">Page 82</p> <p>1 A. He had had some work on the steam cleaning 2 fixture. This was more to the previous 3 fixtures he had built. He had probably 4 built five fixtures before we gave him a 5 steam cleaner, and he did a pretty good 6 job with those five, which made us think 7 he -- Those were very simple fixtures. 8 The steam cleaner was a -- was a step up 9 in challenge. But he had done such a good 10 job on the first ones, we thought taking 11 it to the next level was an obvious 12 choice.</p> <p>13 Q. And it indicates that he's not afraid to 14 ask for assistance when needed?</p> <p>15 A. That's true.</p> <p>16 Q. He's dependable?</p> <p>17 A. Yeah.</p> <p>18 Q. Very exacting in accomplishing his 19 assigned tasks?</p> <p>20 A. Yes. At that time he was doing fine.</p> <p>21 Q. "Areas that need improvement." You note 22 that he needs to accept the entire role 23 for which he was hired, and that the role</p>	<p style="text-align: right;">Page 84</p> <p>1 and clean. The other sentence in there 2 is, "These changes are expected to be 3 accomplished without additional 4 compensation."</p> <p>5 Victor had come to me a couple of 6 times talking about he wasn't making 7 enough money. I told him at the time, 8 "You don't get paid for the job you're 9 doing now. You work for your raise next 10 year." That's just my philosophy. The 11 work I do is reflected in my raise next 12 year. If I don't do very good this year, 13 I don't deserve much next year. But I 14 don't go and complain about what I'm doing 15 now based on my current salary.</p> <p>16 Q. Okay. Then we go to number 2 under "Areas 17 that need improvement." And it says there 18 is a concern with accomplishing routine 19 tasks. "An example is cleaning his work 20 area." So we're back to keeping the work 21 area clean here?</p> <p>22 A. That's a bit of it. It also goes back, 23 and some of this, again, is back into the</p>

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 85</p> <p>1 first issue. When a product is on test, 2 is it actually working or is the PLC, the 3 computer that controls it, is it just 4 turning on and it looks like the product 5 is working? To actually go and touch the 6 thing, is it getting hot or getting cold?</p> <p>7 We even provided him -- I gave him a 8 little, small, hand-held infrared 9 thermometer that he would just have to 10 shoot and point at the side of the device 11 to use to see if it was getting warm. 12 Just some way to record that we know the 13 thing is getting hot the way it's supposed 14 to. And these are starting to creep in 15 that he's not doing these types of things.</p> <p>16 <b>Q. "Needs to improve Initiative. Take it 17 upon himself to correct problems seen, 18 either fixtures or products on test. 19 Don't just report that a product has quit 20 working. Look to see if he can find the 21 trouble." And that's basically what you 22 just related to me?</b></p> <p>23 A. More of that. Again, and the last</p>	<p style="text-align: right;">Page 87</p> <p>1 cleaners and will implement a preventive 2 maintenance system for all Life test 3 fixtures." So at this point in time, when 4 this report was done, he was working on 5 the steam cleaner testing fixture?</p> <p>6 A. Yes, sir.</p> <p>7 Q. <b>And his overall performance, it looks like 8 a 3.5. Is that like 3.5 out of 5?</b></p> <p>9 A. Out of 5. Which, by the way, was the 10 lowest score I gave anybody.</p> <p>11 Q. <b>But it is -- You do indicate he's meeting 12 standards in all important aspects and is 13 a good contributor?</b></p> <p>14 A. I do say that. Rightly or wrongly, the 15 way I was taught to give evaluations is, 16 you never go too high and you never go too 17 low. You never go too high because 18 nobody's perfect. You never go too low 19 because then you kill morale. I did make 20 it clear that this was -- in my opinion, 21 this was a low score; that things needed 22 to start picking up. I didn't want to -- 23 again, I didn't want to grade him too low,</p>
<p style="text-align: right;">Page 86</p> <p>1 sentence, I think, is key -- last two 2 sentences, rather. "In time, he," meaning 3 Victor, "will become the main analyst to 4 determine the Life test failures." We 5 needed a guy in that lab that if that 6 toaster oven stops working, he can then 7 take that toaster oven apart and then 8 either go to the technician or the 9 engineer and show them, well, this thing 10 failed right here. It wasn't expected for 11 him to do it necessarily at this day. But 12 if he's not even opening the units to 13 start looking at them, then he'll never 14 get to the point to where he can identify 15 problems. And at this point he wasn't 16 even wanting to open the unit. He was 17 just going to tell somebody that that 18 thing failed.</p> <p>19 Q. <b>On the next page of this evaluation, I'm 20 just looking at under "Comments," the 21 third line down at the end of that line, 22 it says, "He is now in the midst of 23 developing an automated fixture for steam</b></p>	<p style="text-align: right;">Page 88</p> <p>1 because if you have a potential morale 2 problem and then you grade them very low, 3 then that morale problem just gets worse.</p> <p>4 Q. <b>Let me ask you to look at Plaintiff's 5 Exhibit 2, which are the interrogatories.</b></p> <p>6 A. Okay.</p> <p>7 Q. <b>And if you'd look at number 7. And what 8 this question is asking, just to review, 9 is to list the occasions in which the 10 plaintiff was reprimanded, written up or 11 counseled for anything related to his 12 employment. And there are about, I don't 13 know, seven or eight -- I guess there are 14 eleven items. The first one involves a 15 confrontation with Sam Hickman. Do you 16 know when that happened?</b></p> <p>17 A. Not specifically. It was while Victor -- 18 I believe it was while Victor was running 19 the second shift. See, there was an 20 overlap. If I remember right, the first 21 shift would start at 6 and work till 2:30, 22 and then Victor would come on at 2 and 23 work till 10 or 10:30, something like</p>

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 89</p> <p>1 that. So there was a half-hour overlap 2 where Victor could then go over what was 3 done in the morning so he could continue 4 on for the second shift, and then he could 5 give his status for the group for the next 6 morning.</p> <p>7 <b>Q. Okay.</b></p> <p>8 A. So I'm -- I know it happened during that 2 9 or 2:30 time frame. I'm just not exactly 10 sure what day it happened.</p> <p>11 <b>Q. This happened several months before the</b> 12 <b>last evaluation, didn't it?</b></p> <p>13 A. Oh, yes, sir.</p> <p>14 <b>Q. And once you counseled him about that, did</b> 15 <b>you have any more problem with him</b> 16 <b>confronting other workers in an aggressive</b> 17 <b>or disrespectful way?</b></p> <p>18 A. I didn't have any specific -- Nobody would 19 come up with any -- come to me with any 20 specific instances. There still seemed to 21 be a general feeling within the group that 22 he was a little bit overbearing, and 23 that's the reason for some of the comments</p>	<p style="text-align: right;">Page 91</p> <p>1 <b>Q. That's just a general warning that was</b> 2 <b>issued?</b></p> <p>3 A. Yes, sir.</p> <p>4 <b>Q. To everyone?</b></p> <p>5 A. Yes, sir.</p> <p>6 <b>Q. Let's go to number 4. It says that you</b> 7 <b>and Chad Reese, after learning that the</b> 8 <b>plaintiff had called a female employee</b> 9 <b>from work during his working hours not</b> 10 <b>related to work, which was against company</b> 11 <b>policy and which made her uncomfortable,</b> 12 <b>and then you counseled the plaintiff about</b> 13 <b>that. Who was the employee that he</b> 14 <b>counseled?</b></p> <p>15 A. Ashley Sheffield.</p> <p>16 <b>Q. And what policy did that violate?</b></p> <p>17 A. When she reported it to me, she said she 18 got the call about 9 or 9:30, which, 19 again, his working day ended at 10 or 20 10:30. Again, I forget which. It should 21 -- It would not have been -- There were no 22 scheduled breaks. But it was -- it would 23 be highly unusual and we would discourage</p>
<p style="text-align: right;">Page 90</p> <p>1 in the earlier -- in the May discussion.</p> <p>2 <b>Q. Number 2 just sort of reiterates the first</b> 3 <b>point about the confrontation with Sam</b> 4 <b>Hickman?</b></p> <p>5 A. Yes, sir.</p> <p>6 <b>Q. What was Sam Hickman's job?</b></p> <p>7 A. He was one of the temporary test 8 technicians in the Cleanability Group.</p> <p>9 <b>Q. Now, number 3 talks about the plaintiff,</b> 10 <b>Victor Smith, being counseled; that he</b> 11 <b>needed to quit wasting time on non-work</b> 12 <b>matters, like the telephone and the</b> 13 <b>Internet. Do you recall him being</b> 14 <b>personally singled out and counseled for</b> 15 <b>excessive use of the telephone and the</b> 16 <b>Internet?</b></p> <p>17 A. I know there was an instance where he was 18 counseled about use of the telephone. I 19 don't know if Mr. Robertson singled him 20 out additionally or not.</p> <p>21 <b>Q. Weren't all the employees warned about</b> 22 <b>excessive use of Internet and telephone?</b></p> <p>23 A. That's true.</p>	<p style="text-align: right;">Page 92</p> <p>1 taking a break at 9:30 if you leave at 10 2 -- take a fifteen-minute break from 9:30 3 to 9:45 and then come back to work for 4 fifteen minutes. The breaks generally 5 were supposed to be, you'd have your 6 lunchtime at the midpoint of your day, 7 midpoint of whatever your day was, and 8 then the breaks generally are equal 9 distance apart from those two times.</p> <p>10 Ashley knew the times that they were 11 working, 2 to 10, I believe it was, maybe 12 10:30. We had just been counseled. As a 13 matter of fact, Ashley had just been 14 talked with about the use of telephone and 15 Internet. And the whole group had been 16 counseled about that. So she felt it was 17 incorrect for somebody who was on the 18 night shift to be calling her while they 19 were supposed to be working.</p> <p>20 <b>Q. Okay. Now, if I understand this, you</b> 21 <b>don't know what break schedule he was on?</b></p> <p>22 A. There was no hard-and-fast break schedule 23 due to the nature of the job. I didn't</p>

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 93</p> <p>1 want somebody -- More detail about the 2 job. To conduct a vacuum cleaner test, 3 you test four carpets -- you test three 4 units on four carpets, three runs each. 5 If you're in the middle of a test -- and 6 we have a hard-and-fast -- 9 o'clock is 7 your break. If you're in the middle of a 8 test, we don't want you stopping at that 9 time. We want you to finish your test and 10 then go on and then take your break at the 11 end. So there was no hard-and-fast 8:45 12 is your break and that's it. But, again, 13 it was implied that you wouldn't take your 14 fifteen-minute break within an hour of 15 leaving. It just doesn't make sense. 16 So --</p> <p><b>Q. How many breaks is an employee entitled to in a shift?</b></p> <p>19 A. Of course, we give them lunch, half-hour, 20 and they get two fifteen-minute breaks, 21 one in the morning and one in the 22 afternoon.</p> <p><b>Q. Okay. Now, what did Ashley Sheffield</b></p>	<p style="text-align: right;">Page 95</p> <p>1 She blocked the number from her phone. 2 <b>Q. All right. And what did that make you</b> 3 <b>think?</b></p> <p>4 MR. LIGHTFOOT: Objection. Asked 5 and answered. Go ahead. 6 You can answer again.</p> <p>7 A. Well, just a general feeling of a single 8 male calling a single female and then the 9 single female feeling she has to block the 10 call. Here we are. But in this day and 11 age, anything can constitute sexual 12 harassment.</p> <p><b>Q. Okay. And is that something you talked with Victor about?</b></p> <p>15 A. After discussing it with our general -- 16 our H. R. person, she felt it was best 17 that if -- we at least cover that base to 18 make sure there was no sexual harassment. 19 We really felt like there was none. But 20 in order to cover ourselves, we thought it 21 was best to at least touch on that. The 22 gist of our conversation -- the gist of 23 mine and Chad's conversation with Victor</p>
<p style="text-align: right;">Page 94</p> <p>1 <b>report to you about this incident?</b></p> <p>2 A. That she felt it was unfair that she had 3 just been counseled and the whole group 4 had just been counseled about improper use 5 of telephone and Internet for personal 6 business, and then that night -- that very 7 night she gets a call that's violating 8 that policy.</p> <p><b>Q. Okay. That was the -- Is it correct, then, that that's why she felt aggrieved by this, that someone was calling during working hours when she had been just -- when she had apparently just gotten in trouble for doing the same thing?</b></p> <p>15 A. Yes, sir.</p> <p><b>Q. There was nothing in the call itself that she found offensive or that she reported to you was offensive?</b></p> <p>19 A. The only thing that she reported that made 20 me think that there may have been 21 something else there was that she told me 22 she blocked the call. That another call 23 came later but she had already blocked it.</p>	<p style="text-align: right;">Page 96</p> <p>1 was that he called when he shouldn't have, 2 and to not do anything to put himself in 3 the appearance of harassing somebody.</p> <p><b>Q. Ashley Sheffield is white?</b></p> <p>5 A. Correct.</p> <p><b>Q. Was there at this time any policy about co-employees going out together?</b></p> <p>8 A. No.</p> <p><b>Q. And when you talked to Mr. Smith about this, what was his response?</b></p> <p>11 A. I think he was a little surprised at the 12 sexual harassment. He may have -- Of 13 course, I'm kind of getting into his mind. 14 That's difficult to do. I think he 15 expressed a little shock at the sexual 16 harassment. Again, I tried to make it 17 clear that we were just basically covering 18 our bases to make sure there was no issue. 19 He probably took a little exception to the 20 fact that we said anything. But we also 21 wanted to reiterate that we've got to give 22 the appearance that we just had this 23 conversation about no calls and that night</p>

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 97</p> <p>1 something comes up.</p> <p>2 <b>Q. Did he tell you that he called while he</b> 3 <b>was taking a break?</b></p> <p>4 A. I think he said something to that effect.</p> <p>5 And, again, that's when I said, "Why would</p> <p>6 you be taking a break so late in your</p> <p>7 day?" That was my question.</p> <p>8 <b>Q. After you counseled him about that, did</b> 9 <b>this incident of improper use of the</b> 10 <b>telephone ever occur again?</b></p> <p>11 A. Not to my knowledge.</p> <p>12 <b>Q. Okay. Now, this happened before the first</b> 13 <b>evaluation, Plaintiff's Exhibit 6?</b></p> <p>14 A. I'm sure it did. That was in May?</p> <p>15 <b>Q. Yes.</b></p> <p>16 A. I'm sure it did. Yes.</p> <p>17 <b>Q. And it happened before Victor was moved to</b> 18 <b>the Life testing unit?</b></p> <p>19 A. Yes.</p> <p>20 <b>Q. Number 5 is, again, back to not keeping</b> 21 <b>the work area clean. Number 6 involves</b> 22 <b>not keeping the work area clean. Number 7</b> 23 <b>involves the discussion of bonuses. I</b></p>	<p style="text-align: right;">Page 99</p> <p>1 vacuum cleaners, if you go to a store and</p> <p>2 you see somebody making a claim, we're all</p> <p>3 testing to the same set of standards.</p> <p>4 Those specific tests call for specific</p> <p>5 materials to be used for these tests;</p> <p>6 sand, talcum powder, rice in certain</p> <p>7 cases, various materials. Part of</p> <p>8 Victor's responsibilities as a lead tech</p> <p>9 for the Cleanability Group is to make sure</p> <p>10 that they had plenty of stuff to do their</p> <p>11 testing with. He did not necessarily have</p> <p>12 to order the things himself, but he had to</p> <p>13 let someone know that we need more of this</p> <p>14 and more of that. And there were several</p> <p>15 times when he would start to fall down on</p> <p>16 not having the right sand or not having</p> <p>17 the proper materials to do the test.</p> <p>18 <b>Q. Okay. So that was when he was in</b> 19 <b>Cleanability?</b></p> <p>20 A. Correct.</p> <p>21 <b>Q. And that would have been, of course,</b> 22 <b>several months before the evaluations?</b></p> <p>23 A. Right.</p>
<p style="text-align: right;">Page 98</p> <p>1 think we've talked about that. Number 8,</p> <p>2 that such discussions with other employees</p> <p>3 was inappropriate and prohibited. That</p> <p>4 would be bonuses, discussion about</p> <p>5 bonuses?</p> <p>6 A. Any kind of compensation.</p> <p>7 <b>Q. And I think we said that once he was told</b> 8 <b>not to do that, although he disagreed with</b> 9 <b>the policy, he did not repeat that</b> 10 <b>mistake?</b></p> <p>11 A. To my knowledge, he didn't.</p> <p>12 <b>Q. Number 9 deals with a charge that Victor</b> 13 <b>was not maintaining the supply inventory</b> 14 <b>for the Cleanability Group properly. What</b> 15 <b>specifically is that about?</b></p> <p>16 A. There are several materials that are</p> <p>17 required. I want to get the name right.</p> <p>18 The American Society for Test and</p> <p>19 Measurements -- it's now called ASTM</p> <p>20 International -- has set about some</p> <p>21 specific standards on how to test a vacuum</p> <p>22 cleaner. So basically, Hoover,</p> <p>23 Electrolux, Euro-Pro, anybody who makes</p>	<p style="text-align: right;">Page 100</p> <p>1 <b>Q. Number 10. "Ralph Hudnall," which is, of</b> 2 <b>course, you, "repeatedly counseled the</b> 3 <b>plaintiff that he needed to perform his</b> 4 <b>duties at a higher level." And then it</b> 5 <b>goes on and includes some specific things</b> 6 <b>that you told the plaintiff he needed to</b> 7 <b>do. Now, it says "repeatedly counseled."</b> 8 <b>How many times did you counsel with the</b> 9 <b>plaintiff that he needed to perform his</b> 10 <b>duties at a higher level?</b></p> <p>11 A. Maybe a dozen. A lot of these are verbal</p> <p>12 talks. You know, it's not written. We've</p> <p>13 got to start picking things up. And I do</p> <p>14 note various things, though. When we talk</p> <p>15 about at the higher level, are we</p> <p>16 including the rest of the things in that</p> <p>17 or just that comment "bring it to a higher</p> <p>18 level?"</p> <p>19 <b>Q. I'm sorry. I don't understand.</b></p> <p>20 A. Your question was something to the effect</p> <p>21 of, how many times did I counsel him to</p> <p>22 bring his duties to a higher level? If I</p> <p>23 include the other things that are</p>

25 (Pages 97 to 100)

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## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 101</p> <p>1 mentioned in that same sentence, then    2 there's -- there's easily a dozen, if not    3 more. They may not have all said, you've    4 got to bring the job to a higher level.    5 It may have been something like, we need a    6 maintenance system for these test fixtures    7 so we know how often they need to get --    8 how often they need service or the last    9 time they had service. We've talked about    10 this before, about the maintenance of --    11 just the maintenance of the entire room,    12 whether the product is working properly or    13 not. As I said, verifying the operation    14 of all testing fixtures and buying the    15 correct and appropriate number of parts    16 for the steam cleaner he was trying to    17 build. There were several times when,    18 okay, we bought the wrong part. Not only    19 did we buy one wrong, we bought four, five    20 or six of the wrong thing and then we've    21 got to send them all back and get new    22 ones.    23 The work of the steam cleaner, as it</p>	<p style="text-align: right;">Page 103</p> <p>1 tech; is that right?    2 A. Yes, sir.    3 Q. Did she work in close proximity to Victor    4 at the facility or --    5 A. Their assigned spaces were a little apart.    6 But, I mean, we all worked in close    7 proximity.    8 Q. Did she ever complain in any way about    9 Victor, other than that one time?    10 A. Not that I recall.    11 Q. And she never specifically said anything    12 to indicate that what Victor said to her    13 was in the nature of sexual harassment?    14 A. That's correct.    15 Q. That's an assumption that was made based    16 on things other than what she directly    17 told you?    18 MR. LIGHTFOOT: Objection. Go    19 ahead. You can answer.    20 A. That's correct. That's correct.    21 Q. When Victor Smith was moved to Life    22 testing, his supervisor did not change?    23 A. Correct.</p>
<p style="text-align: right;">Page 102</p> <p>1 says, it's a steam cleaner. So the water    2 is going to get to a boiling point. And    3 there were times we buy parts that weren't    4 rated for -- to handle hot water. So    5 you've got to send those back and get new    6 parts in. Adding all that together, at    7 least a dozen.    8 Q. Okay. But none of that was in writing,    9 except to the extent it's reflected in the    10 two written evaluations that we've gone    11 over?    12 A. Correct.    13 Q. Okay. Number 11. You counseled the    14 plaintiff on at least one occasion, that    15 the building of a steam cleaner testing    16 station was progressing too slowly and    17 costing too much money?    18 A. Right.    19 Q. That was the project Victor was working on    20 at the time he was terminated, correct?    21 A. That's correct.    22 Q. Let me ask you about -- Go back to Ashley    23 Sheffield for a moment. She was a lab</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. That was still you?    2 A. Right.    3 Q. The group of people that he could have    4 access to for assistance maybe in    5 designing or building the things he was    6 supposed to design and build, did they    7 change?    8 A. Well, he had no responsibility. So, yes,    9 they did. I mean, yeah. He was no longer    10 over Vacuum performance, which I was    11 pretty much -- if there was an authority,    12 it was me. He came into another realm,    13 which I was still pretty much the    14 authority on, but we had other people who    15 had experience that could help. So in    16 that manner it did change.    17 Q. Okay. Who did he have he could go to for    18 help?    19 A. Of course, myself, Chad Reese.    20 Q. Is Chad Reese an engineer?    21 A. Yes, sir. Mechanical. We like to funnel    22 the resources through one or two other    23 individuals, Brian McGhee and Andres</p>

## FREEDOM COURT REPORTING

<p style="text-align: center;">Page 105</p> <p>1 Simon. Andres had a Master's in    2 mechanical engineering. He could    3 certainly help with some of the mechanical    4 side of the things. Brian had a Master's    5 Degree in electrical engineering, and he    6 could help with certain things. But at    7 the same time, and as I've kind of said in    8 the past, we didn't want Victor to rely    9 solely on any one person or rely on    10 anybody to do all of the job. You go get    11 some advice, and then you go and do your    12 thing, and then you go back and get some    13 more advice.</p> <p>14 <b>Q. Now, let's talk about the steam cleaner</b>    15 <b>testing system.</b></p> <p>16 A. Okay.</p> <p>17 <b>Q. Did someone design or draw out some</b>    18 <b>parameters for this system and give them</b>    19 <b>to Victor and say, "You finish designing</b>    20 <b>it and building it?" Did they give him a</b>    21 <b>blueprint and say "build it", or did they</b>    22 <b>just say, "We want you to design and build</b>    23 <b>something to do this?"</b></p>	<p style="text-align: center;">Page 107</p> <p>1 table and then hammer out the details.    2 (Plaintiff's Exhibit 10 marked    3 for purposes of identification)</p> <p>4 <b>Q. The drawing you mentioned -- I'll show you</b>    5 <b>Plaintiff's Exhibit 10. Is that the</b>    6 <b>drawing?</b></p> <p>7 A. That would be it.</p> <p>8 <b>Q. Who made that drawing?</b></p> <p>9 A. I think Chad drew it.</p> <p>10 <b>Q. Okay. Was that the first written</b>    11 <b>description of what Victor was supposed to</b>    12 <b>construct?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. Is that the only written description of</b>    15 <b>what he was supposed to construct?</b></p> <p>16 A. There would be -- In conjunction with this    17 would be the product specification for the    18 steamers themselves. But this would    19 detail -- this actually details our    20 expected time line for getting things    21 finished. And it gives him a general idea    22 of how he could then use an air cylinder    23 to actuate the steam trigger. We seemed</p>
<p style="text-align: center;">Page 106</p> <p>1 A. It started off as basic verbal    2 discussions, verbal and visual. Okay.    3 Here's a steamer. We show him how it    4 works. This is what you have to do.    5 Conduct a little research and tell me what    6 you think, how you think we can do it, and    7 then we'll talk about where we can -- what    8 the next steps are. Sorry.    9 At one point we did sketch out an    10 idea of how he could handle some of the    11 issues he was coming up with. It was in    12 no way, shape or form a blueprint. The    13 sketch that was made would not even --    14 wouldn't leave our building as anything    15 other than a simple sketch. The reason    16 for that is, because everybody who was    17 concerned with it was right there in our    18 building. If there was an issue, like "I    19 can't figure this out," we could very    20 easily walk to the steam cleaner station    21 -- or where the steam cleaners were going    22 and see what the issue was, or we could    23 gather in our conference room all around a</p>	<p style="text-align: center;">Page 108</p> <p>1 to have a problem, "Okay, somebody's got    2 to squeeze the trigger. How do I do that?    3 Well, you can do that with air. Well, how    4 do I do it with air? Oh, okay." You just    5 make a cylinder and even -- we'd show them    6 cylinders. We'd get a cylinder, attach it    7 somehow to the nozzle. I can't tell him    8 how because he's the one that's -- he's    9 the one that's going to have to change the    10 nozzle out at some point. I could tell    11 him specifically do this and this and    12 this, but it might make his life a lot    13 tougher when he has to change that product    14 out. We wanted him to think about how you    15 could look at this and then make those    16 changes yourself with this as a concept.</p> <p>17 <b>Q. So it was up, then, to Victor to design</b>    18 <b>this machine -- this testing machine based</b>    19 <b>on that drawing and the other things that</b>    20 <b>he was told about what you wanted to</b>    21 <b>accomplish?</b></p> <p>22 A. Yes, sir.</p> <p>23 <b>Q. Okay. He wasn't given any blueprint or</b></p>

## FREEDOM COURT REPORTING

<p style="text-align: center;">Page 109</p> <p>1     diagram other than that to show what he 2     was to build?</p> <p>3     A. That's correct.</p> <p>4     <b>Q. Was he given a timetable to complete this</b> 5     <b>project?</b></p> <p>6     A. 7/28.</p> <p>7     <b>Q. Is that on that page there?</b></p> <p>8     A. Yes, sir.</p> <p>9     <b>Q. Do you know when the project was assigned</b> 10    <b>to him?</b></p> <p>11    A. It was probably mid-May or so.</p> <p>12    <b>Q. Okay.</b></p> <p>13    A. It may be later. It may be later on in 14    May. I'm thinking sometime in May he was 15    assigned the project.</p> <p>16    <b>Q. Okay. And that writing there, is that</b> 17    <b>Chad -- Help me.</b></p> <p>18    A. Reese.</p> <p>19    <b>Q. -- Reese's?</b></p> <p>20    A. Yes, sir.</p> <p>21    <b>Q. Was there a budget for this project?</b></p> <p>22    A. Not a hard-and-fast budget.</p> <p>23    <b>Q. Well, was there any budget?</b></p>	<p style="text-align: center;">Page 111</p> <p>1     they were there and that we needed them to 2     help Victor in certain cases.</p> <p>3     <b>Q. Well, did Victor ever come to you for help</b> 4     <b>with his steam cleaner machine?</b></p> <p>5     A. Sure.</p> <p>6     <b>Q. Testing machine?</b></p> <p>7     A. A few times.</p> <p>8     <b>Q. And what kind of help was he asking for?</b></p> <p>9     A. It depended. When he would come to me, it 10    would depend. It may be he didn't know 11    where to find this valve or he doesn't 12    know where to -- Finding parts, for the 13    most part. Some theory about how do we do 14    certain things. General guidance, for the 15    most part.</p> <p>16    <b>Q. Do you know if he went to any of the</b> 17    <b>engineers for assistance?</b></p> <p>18    A. Yes. I know he would talk to Chad on 19    occasion. I know he would talk to Brian 20    on occasion. Actually, one of the details 21    was -- and this was -- the comment from 22    Brian to me was that Victor would come to 23    him; Brian would give him advice. Victor</p>
<p style="text-align: center;">Page 110</p> <p>1     A. Generally, no. But we don't want to just 2     spend -- As an organization, we needed to 3     watch what we spend and make sure we, 4     again, buy the correct parts.</p> <p>5     <b>Q. Sure. Was Victor given any information</b> 6     <b>about what kind of money you expected to</b> 7     <b>spend on this project?</b></p> <p>8     A. I doubt it.</p> <p>9     <b>Q. Now, was Victor given engineering support</b> 10    <b>if he needed it?</b></p> <p>11    A. Yes. Absolutely.</p> <p>12    <b>Q. And who was he told to go to?</b></p> <p>13    A. Well, his first contact was me. I'm not 14    the degreed engineer. But I've been doing 15    this almost twenty years now. Chad Reese 16    was on the project. Chad's at least a 17    mechanical engineer. Andres Simon was 18    assigned -- Andres Simon was available for 19    help. Brian McGhee was available for 20    help. They weren't necessarily available 21    on an on-call basis, as they had their own 22    projects to run. They had to get their 23    own work done. But they also knew that</p>	<p style="text-align: center;">Page 112</p> <p>1     would go out to do something, and then 2     Brian would go check it later and he 3     wouldn't do what Brian had advised him. 4     He had actually done something different 5     on a couple of occasions. And it was 6     getting to the point where Brian felt that 7     Victor was using him as a how-do-you-do-it 8     kind of guy as opposed to give me some 9     advice and I'll go and see what I can do; 10    that he was leaning more towards -- almost 11    towards trying to get Brian to do the -- I 12    won't -- almost leaning to get Brian to do 13    the work for him.</p> <p>14    <b>Q. Brian's last name is what?</b></p> <p>15    A. McGhee.</p> <p>16    <b>Q. He's an engineer?</b></p> <p>17    A. Yes, sir.</p> <p>18    <b>Q. And is he still an employee of Euro-Pro?</b></p> <p>19    A. Yes, sir.</p> <p>20    <b>Q. Could you kind of go down through the</b> 21    <b>project with me, Mr. Hudnall, the steam</b> 22    <b>cleaner tester, and tell me every way you</b> 23    <b>say that Victor failed in designing and</b></p>

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 113</p> <p>1       <b>constructing this machine?</b></p> <p>2   A. A lot of it's detailed. The first thing 3   he missed was the expected completion 4   date. Several instances of buying the 5   wrong parts. As I stated earlier, some 6   things we -- some assumptions we made -- 7   The product is generating steam. So any 8   component that's going to -- that that 9   steam is going to touch needs to be rated 10   for a high-temperature component, as well 11   as a fairly high-pressure device.</p> <p>12   There were times when he would buy 13   components that were neither high-pressure 14   nor high-temperature. So there's an 15   expenditure there that didn't need to be 16   done. We get the parts in. They don't 17   work. So we have to install them. They 18   don't work. We've got to take those off. 19   We've got to identify new components, 20   order those and install those. That 21   happened several different times in the 22   process.</p> <p>23   I'm sure there's others that will</p>	<p style="text-align: right;">Page 115</p> <p>1   <b>Q. Of '04?</b></p> <p>2   A. Of '04. Yes, sir.</p> <p>3   <b>Q. And who made the decision to terminate his 4   employment?</b></p> <p>5   A. Terry Robertson.</p> <p>6   <b>Q. Were there discussions that you had with 7   Terry Robertson before that decision was 8   made?</b></p> <p>9   A. Yes, sir.</p> <p>10   <b>Q. And when did you first start talking with 11   Terry Robertson about anything to do with 12   the possibility of terminating Victor 13   Smith?</b></p> <p>14   A. Well, I never approached Terry with the 15   idea of a termination. I approached Terry 16   which some specific instances of some 17   concern that I knew he would be -- would 18   want to know about. That was probably -- 19   I don't know the dates. Late in November, 20   in and around the Thanksgiving time frame.</p> <p>21   <b>Q. Okay. And when you first approached him, 22   what was the issue you discussed with him?</b></p> <p>23   A. Victor had taken vacation. And I felt I</p>
<p style="text-align: right;">Page 114</p> <p>1       come to me. The main thing to me was that 2   it wasn't complete on time. We were 3   almost wasting money because we were 4   buying the wrong parts that obviously 5   wouldn't go into this fixture. And then 6   after we started to bring it to his 7   attention that it was taking too much time 8   and costing too much money, it seemed like 9   the project just drug on longer and 10   longer. As I said, I'm sure there's other 11   things that I can add to it. Those are 12   the main points in my mind right now as to 13   what was wrong with the steam fixture.</p> <p>14       (Lunch recess)</p> <p>15   <b>Q. Mr. Hudnall, I want to ask you now -- I 16   want to move to the date that Victor Smith 17   was terminated --</b></p> <p>18   A. Yes, sir.</p> <p>19   <b>Q. -- as an employee of Euro-Pro. When did 20   that happen?</b></p> <p>21   A. I believe it was something like December 22   3rd. I think that's when it was. 23   Something in that neighborhood.</p>	<p style="text-align: right;">Page 116</p> <p>1       had made it very evident that I would need 2   to be able to operate the steam cleaner 3   fixtures properly while Victor was on 4   vacation. I actually wanted to take that 5   opportunity to go through and kind of 6   critique his work. I don't like to do 7   that in front of the employee because it 8   can sometimes become belittling, and that 9   was not my intention to belittle anybody. 10   I just wanted to take a chance and look 11   through the whole thing myself, knowing 12   it's a fairly complex fixture, to see how 13   well it was operating and see if there was 14   any things I could help Victor -- either 15   help the machine get better or help Victor 16   to get it better the next time we have 17   another similar project to work on.</p> <p>18   <b>Q. Let me just interrupt here a second. At 19   this time, in November, had he completed 20   building the testing machine?</b></p> <p>21   A. I would say it was not fully operational. 22   It seemed like that every -- it would fail 23   often enough that -- or have to be stopped</p>

## FREEDOM COURT REPORTING

<p style="text-align: center;">Page 117</p> <p>1     -- We found a problem often enough that I 2     couldn't say it was completely 3     operational, but it would run probably 4     eighty percent of the time it needed to 5     run. So it was in an operational 6     condition, but there's still probably some 7     bugs to be figured out about it.</p> <p>8     <b>Q. But that's typical any time you build a 9     machine of this complexity, isn't it, that 10    there are bugs you have to get out of it?</b></p> <p>11    MR. LIGHTFOOT: Objection.</p> <p>12    THE WITNESS: I still answer, 13     right?</p> <p>14    MR. LIGHTFOOT: You do.</p> <p>15    <b>A. Yes. That's not uncommon. It's not 16     uncommon.</b></p> <p>17    <b>Q. Okay. All right. So he was going -- 18     Victor was going on vacation or I guess 19     had gone on vacation, and then continue 20     on.</b></p> <p>21    <b>A. He was on vacation. Monday morning I go 22     to work. And as is my normal routine, I 23     start turning the equipment on, knowing</b></p>	<p style="text-align: center;">Page 119</p> <p>1     not knowing if it's safe to operate and 2     knowing that people are going to be 3     passing by. Either the building gets 4     blown up or the thing blows up and hurts 5     somebody, or anything could happen if the 6     -- if we're not properly discharging the 7     steam. So I look at the fixture. I see 8     some -- I see loose wires on every 9     station. I'm concerned about how to -- 10    should I even turn it on now. I go back 11    to my desk. I call Victor. Got him on 12    the phone. He reminded me that he had had 13    some issues with the steam cleaner, and 14    that he had disconnected these wires. I'm 15    not sure if he told me at that time or if 16    we -- I think he did say at that time that 17    he had spoken to Chad about it and that 18    everything was okay. Chad was in the 19    hospital with -- at least with chest 20    pains. I don't know exactly what the 21    condition was. But I believe he was in 22    the hospital room -- this comes out after 23    the fact -- when Victor and Chad had their</p>
<p style="text-align: center;">Page 118</p> <p>1     that, you know, it's my job to do this. I 2     get to the steam cleaner and I can't -- I 3     see that there are wires disconnected from 4     the fixture itself. And I'm afraid to 5     turn it on because I don't know what the 6     wires are there for, why they're there -- 7     rather, why they're not connected, and 8     what that's going to do if I do turn the 9     machine on. Because, again, portable 10    steam cleaners -- any steam-generating 11    vessel, if you don't vent the steam but 12    you allow the unit to continue to heat 13    becomes a bomb, literally becomes a bomb. 14    It will explode. If you're making steam 15    and you don't release that pressure -- 16    It's just like the old-style pressure 17    cookers that blow up and blow the meat 18    sauce all over the roof. This is what 19    you've got. Steam cleaners, by their 20    operation, make more pressure than a 21    pressure cooker. So that makes the 22    explosion that much worse. 23    I was not going to turn this thing on</p>	<p style="text-align: center;">Page 120</p> <p>1     discussion. 2     Anyway, I asked Victor, "Where do the 3     wires go?" He said he would take care of 4     it when he got back. I indicated that 5     that wasn't acceptable because we had to 6     run it this week while he's gone -- or the 7     time he's gone. I think I said something 8     to the effect of, "I'll see if I can't 9     figure it out. But if I can't figure it 10    out, I've got to be able to talk to you so 11    I can put this thing back into running 12    order." 13    I went back to the steam cleaner to 14    -- We hung up. I went back to the steam 15    cleaner to see if I could figure out where 16    the wires went. I couldn't. I tried to 17    call Victor again and I couldn't get him 18    back on the phone. At that point I went 19    to Mr. Robertson and explained that the 20    steam cleaner is not working. These wires 21    are disconnected. I can't get in touch 22    with Victor. My only option at this point 23    is to take everything out and see what all</p>

## FREEDOM COURT REPORTING

<p style="text-align: center;">Page 121</p> <p>1 goes back in and to rebuild it. I'd    2 rather not do that because that's going to    3 take another couple of months to get it    4 figured out. "What do you want to do?"    5 Basically asking Terry, "How do you want    6 to handle this?" My instruction was to    7 then attempt to make it work. If I can't    8 make it work, we'll deal with it when    9 Victor comes back.</p> <p>10 <b>Q. Did you then try to make it work?</b></p> <p>11 A. Yes, sir.</p> <p>12 <b>Q. Were you able to make it work?</b></p> <p>13 A. No, not at all.</p> <p>14 <b>Q. Did Victor have any discussion with you before he left to go on vacation about the problems -- about the issues with the steam cleaner? You said he reminded you that there were issues with it.</b></p> <p>19 A. He said something about -- We use a    20 transducer to determine -- A transducer is    21 a device that takes an analog signal --    22 "analog" being a natural signal -- and    23 transposes it into an electrical impulse</p>	<p style="text-align: center;">Page 123</p> <p>1 <b>Q. Did he work on Saturday and Sunday?</b>    2 A. No, sir. It would have been Friday.</p> <p>3 <b>Q. Okay. So did he work a full day that Friday?</b>    4 A. He asked me about taking off early. And I    5 said that if he would make the thing    6 operational and get me up to speed on how    7 to make it work, leaving a little early    8 probably wouldn't be a problem. But    9 you've got to meet these conditions first.</p> <p>11 <b>Q. Did he talk with you before he left?</b>    12 A. No, sir.</p> <p>13 <b>Q. He was out a week?</b>    14 A. Yes, sir.</p> <p>15 <b>Q. All right.</b>    16 A. I would need to review it, but I believe    17 it was a one-week vacation. I don't think    18 it was two. I think it was one.</p> <p>19 <b>Q. Okay. Now, when he got back, was that on a Monday?</b>    21 A. Yes, sir.</p> <p>22 <b>Q. Is that the day he was terminated?</b>    23 A. Yes, sir.</p>
<p style="text-align: center;">Page 122</p> <p>1 that a machine can then read. So we use    2 this transducer -- we wanted to use the    3 transducer to monitor the steam output so    4 we'd know when to refill it. He said he    5 was having some trouble making the    6 transducer operate. My comment back to    7 that was, "Can you make this fixture    8 operational?" He said, "Yes." I said,    9 "Well, make it operational, and we'll    10 worry about the transducers at a later    11 point." The final direction was, "Make it    12 operational or make sure I understand why    13 it is not operational."</p> <p>14 <b>Q. And when was the last moment he was on the job before he left to go on vacation, before his vacation began?</b></p> <p>17 A. I'm not sure if I understand.</p> <p>18 <b>Q. Well, was it -- I mean, what day did his vacation begin? Was it like a week vacation, beginning on a Monday?</b></p> <p>21 A. Oh, yes, yes. I'm sorry. His vacation    22 started on a Monday and it was supposed to    23 run through the week.</p>	<p style="text-align: center;">Page 124</p> <p>1 <b>Q. How many conversations did you have during the week of his vacation with Terry Robertson about Victor Smith?</b>    4 A. I don't know. I honestly don't know.</p> <p>5 <b>Q. At what point did you become aware that Terry Robertson was going to terminate Victor Smith's employment?</b>    8 A. After it happened.</p> <p>9 <b>Q. You didn't know what was going to happen before it happened?</b>    11 A. That's correct.</p> <p>12 <b>Q. Who all -- Well, when did Terry Robertson meet with Victor Smith to tell him he was fired?</b>    15 A. It's my understanding it was the morning of his return from vacation.</p> <p>17 <b>Q. Were you present in the office when that meeting occurred? I say "in the office." I assume it was done in Mr. Robertson's office?</b>    21 A. I think it was done in his office. Was I present in Mr. Robertson's office?</p> <p>23 <b>Q. Yes.</b></p>

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 125</p> <p>1 A. No, sir.      2 Q. You weren't present when Victor was told      3 he was being fired?      4 A. That's correct.      5 Q. Do you know who all was present?      6 A. I believe it was Terry Robertson and Chad      7 Reese.      8 Q. Did you have more than one discussion with      9 Terry Robertson during the week of Victor      10 Smith's vacation about Victor Smith?      11 A. Yes.      12 Q. Was it more than one?      13 A. More than one.      14 Q. What else did you talk about, other than      15 what you've already told me?      16 A. I don't recall. I would say that it all      17 centered around the steam cleaner at that      18 point.      19 Q. Now, there is -- has been marked as an      20 exhibit, and I don't recall the number,      21 some notes of an exit interview. Do you      22 see that?      23 A. This one (indicating)?</p>	<p style="text-align: right;">Page 127</p> <p>1 Q. Yes.      2 A. No, sir.      3 Q. All right. Did you ever express to Terry      4 Robertson that Victor appeared not to want      5 to work for Euro-Pro?      6 A. I don't recall saying that. No, sir.      7 Q. That's not your conclusion, number 1?      8 A. No, sir.      9 Q. Number 3 talks about lab view software      10 controls.      11 A. Yes, sir.      12 Q. Do you know what that's referring to?      13 A. Lab view is what is known in the industry      14 as a graphic user interface. Basically      15 what that allows -- what that does, it's a      16 computer program that you put on your      17 computer. It allows a very -- it allows      18 very easy access into -- This is not a      19 very good summary. Our use would be to      20 allow it to -- allow a user and in anybody      21 to go to the computer and very easily pull      22 up information on the various tests that      23 are being conducted in the Life test room.</p>
<p style="text-align: right;">Page 126</p> <p>1 Q. Yes.      2 A. 8.      3 Q. Do you know whose notes those are?      4 A. I believe they're Mr. Robertson's. Yes.      5 Q. Have you ever seen these before today?      6 A. Yes, sir.      7 Q. When's the first time you saw them?      8 A. I don't recall. It was some months after      9 Victor was dismissed.      10 Q. Did you see them before this case was      11 brought?      12 A. I don't think so.      13 Q. Under what circumstances did you review      14 this document, Plaintiff's Exhibit 8?      15 What were the circumstances that brought      16 this document to your attention?      17 A. I believe it was the fact that we now have      18 this court case that it was brought to my      19 attention.      20 Q. Paragraph number 1 says, "Don't appear to      21 want to be here." Do you know what that      22 refers to?      23 A. Do I know?</p>	<p style="text-align: right;">Page 128</p> <p>1 You could relatively easily then change      2 the parameters of the tests so that you      3 could -- it makes it a little bit easier      4 to write new programs, to put the units      5 on, to take the units off, to help conduct      6 analyses of the units as they're on the      7 test. There's a million things you can do      8 with lab view.      9 Q. What was Victor Smith supposed to be doing      10 with lab view? How does that relate to      11 his job?      12 A. Part of what we wanted -- The current --      13 I'm sorry. At that time the current state      14 of affairs was, we had probably as many as      15 fifteen different tests operating at one      16 time. Lab view, if properly used and      17 properly installed, we were hoping to be      18 able to use this to install it on one      19 computer -- I need to back up. With the      20 fifteen different units, fifteen different      21 fixtures going, if I wanted to know      22 information about that specific fixture, I      23 would have to take a computer or a</p>

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 129</p> <p>1 hand-held device, some device and actually    2 connect it to that station. There is a    3 Programmable Logic Controller, or PLC, in    4 the station, which is a mini-computer that    5 tells the station what to do. I would    6 interface with that station, with that    7 PLC. And then I could tell at what status    8 the station was in, whether it was    9 running, whether it was -- how many cycles    10 the unit had conducted, where it was in    11 the program, if it's operating or if it's    12 not operating. Basically it allows me to    13 see into the program and get an idea of    14 how the programs work.</p> <p>15 Lab view would then be installed on    16 one main computer, and then all the other    17 little PLC's would be networked into that    18 computer. And instead of having to go to    19 each individual station, I can go to one    20 spot and look at all of them.</p> <p>21 <b>Q. Okay.</b></p> <p>22 A. Victor was supposed to take lab view and    23 install it on the computer and help us</p>	<p style="text-align: right;">Page 131</p> <p>1 have made sense at that point after he was    2 done -- after he was done with the steamer    3 to start looking into the lab view.</p> <p>4 <b>Q. Okay. Item number 4 talks about a pant</b>    5 <b>press that had -- has been in the</b>    6 <b>Reliability stations for many months.</b>    7 <b>What does that mean, "been in the</b>    8 <b>Reliability stations?"</b></p> <p>9 A. Terry preferred the term "Reliability    10 testing" to "Life testing." I guess the    11 -- I'm guessing the connotation of "Life    12 test" is not as positive, possibly in the    13 consumer's mind, as the term "Reliability    14 testing." But in my mind, "Reliability    15 stations" and "Life stations" are the same    16 thing.</p> <p>17 <b>Q. Okay. So this is a station to test a pant</b>    18 <b>press?</b></p> <p>19 A. Correct.</p> <p>20 <b>Q. And how did that relate to Victor's job?</b></p> <p>21 A. It was another device that we were    22 evaluating for sale for possible inclusion    23 into the Euro-Pro line. In order to get</p>
<p style="text-align: right;">Page 130</p> <p>1 make it work to interface all the other    2 pieces.</p> <p>3 <b>Q. Okay. And that didn't get done? Is that</b>    4 <b>what you're saying?</b></p> <p>5 A. That's correct.</p> <p>6 <b>Q. Is that something you discussed with Terry</b>    7 <b>Robertson?</b></p> <p>8 A. Yes. I made a comment that it had not    9 been up and --</p> <p>10 <b>Q. Did Victor know how to program a computer</b>    11 <b>in that fashion?</b></p> <p>12 A. I don't know.</p> <p>13 <b>Q. When was he asked to do that?</b></p> <p>14 A. This was kind of part of the -- Let me    15 look. I don't want to guess. I'm not    16 sure if I talked to him in August or if I    17 talked to him in May. It may have come    18 out in August. Because as I said -- I    19 believe it did come out in August.    20 Because he had -- we already had a few    21 stations running. The addition of the    22 steamer and the other stations that were    23 in the process to be connected, it would</p>	<p style="text-align: right;">Page 132</p> <p>1 an idea as to whether the thing works very    2 well or works for any length of time, we    3 wanted Victor to operate the unit several    4 times a day.</p> <p>5 <b>Q. When was he assigned that job?</b></p> <p>6 A. I don't remember when we got the unit.</p> <p>7 <b>Q. Was it before or after the evaluations?</b></p> <p>8 A. It may be between the informal but before    9 the -- Honestly -- I take that back. I    10 don't remember. We get a lot of one-of    11 products. And sometimes a test is simply    12 "Will this test last for any length of    13 time?"</p> <p>14 <b>Q. What does number 5 refer to, "Failure and</b>    15 <b>analysis of failed items in Reliability?"</b></p> <p>16 A. If we go -- If a unit is on test and    17 either it completes the requirements or it    18 fails before it completes the    19 requirements, I wanted Victor to be the    20 first one to take that unit apart, to    21 start to analyze what was wrong with it,    22 why it failed, at least at this point to    23 start to pinpoint what were the failure</p>

33 (Pages 129 to 132)

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## FREEDOM COURT REPORTING

Page 133	Page 135
<p>1 modes, and then take that back to the  2 engineering team again to learn a little  3 bit more about the products so he would  4 eventually grow into the role of becoming  5 the go-to guy for telling us why the  6 products failed and possibly offering  7 engineering solutions. This was all part  8 of his growth as a Reliability guy, Life  9 test guy, whatever you want to call him.</p> <p>10 <b>Q. Number 6 deals with the clean-up of the</b>  11 <b>area. I think we've talked about that. I</b>  12 <b>won't get into that.</b></p> <p>13 Number 7, "Totally changed  14 personality after being made permanent."  15 Do you know what this means, "after being  16 made permanent?" Would that be when he  17 was moved from temp to permanent?</p> <p>18 A. Correct.</p> <p>19 Q. That would have been in December of 2003?</p> <p>20 A. Right.</p> <p>21 Q. Is this conclusion about "totally changed  22 personality," is this something you  23 expressed to Terry Robertson?</p>	<p>1 -- he's the kind of guy that he brought  2 out Brewster's ice cream one day, bought  3 it out of his pocket. Just had the guys  4 bring their truck down and bought  5 everybody ice cream one afternoon.</p> <p>6 <b>Q. The thing, I guess, that's confusing about</b>  7 <b>this to me, when I look down here and see</b>  8 <b>"totally changed personality," as of</b>  9 <b>December of '03, and then we get these</b>  10 <b>evaluations indicating that he's meeting</b>  11 <b>or exceeding expectations, it doesn't seem</b>  12 <b>to fit to me. And I'm just wondering if</b>  13 <b>that -- the "totally changed personality,"</b>  14 <b>do you agree with that assessment?</b></p> <p>15 MR. LIGHTFOOT: Objection, to the  16 extent it's been asked and  17 answered by Mr. Hudnall  18 already. If you want to try  19 to expand, you can.</p> <p>20 A. I have to agree that it seemed he was not  21 the same -- I really don't like this word  22 -- but effervescent person when he started  23 that he was later with Euro-Pro. It</p>
Page 134	Page 136
<p>1 A. Not the "changed personality." I don't  2 know that I used those words. I did  3 express a seeming resistance now to accept  4 new responsibilities. Other people --  5 It's my understanding that other people  6 have made similar type comments or other  7 comments that Terry then used to come up  8 with the term "changed personality."</p> <p>9 Q. How closely did Terry Robertson work with  10 Victor Smith?</p> <p>11 A. That's a hard one to answer. As I've said  12 before, we were a small organization.  13 Terry really wanted to create this family  14 environment. I mean, he took an active  15 interest in everybody's personal life,  16 basically to make sure you're a happy  17 person and you were happy to come to work.  18 That's really the only way I could answer  19 it. How closely, I mean --</p> <p>20 Q. Was Terry there on a daily basis?</p> <p>21 A. Again, that's tough. But he traveled a  22 lot. But when he was there, he was very  23 hands-on with all of us. I mean, he would</p>	<p>1 seemed like when you would want to assign  2 something new to him, there would be --  3 there would always be some reason why not.  4 "Do I get more money for this?" Or, "It's  5 another responsibility. Do I get  6 something extra?" Those kind of things.  7 And that's when I'd have to say again, you  8 know, we don't work for the pay we're  9 making now. We work for next year's  10 raise. The more of these things you  11 accept willingly with no pain and  12 suffering on our part, the better your  13 raise is going to look like next year when  14 we get ready to do something. In that  15 respect, I don't know if "changed  16 personality" is the right word, but there  17 was a definite change in temperament.  18 I'll put it that way.</p> <p>19 Q. Let's move to number 8, because that talks  20 about something that I don't think we've  21 touched on yet. It has two parts really.  22 The first is about discussion of bonuses  23 with other employees, which we have talked</p>

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 137</p> <p>1       about. And then number 2 is, "Accused 2       while here of a problem with two other 3       female employees of harassment, both from 4       the office and outside the office." Now, 5       who were those two female employees that 6       we're talking about there?</p> <p>7       MR. LIGHTFOOT: Objection, to the 8       extent he says this isn't 9       his document. Now, you can 10      answer his question if you 11      want. But you said "that 12      we're talking about here."</p> <p>13      <b>Q. Well, that are referred to in this 14      document. I understand it's not your 15      document. But, on the other hand, you 16      know, our subpoena does say that we want 17      to question on the reasons for 18      termination. And this is -- you know, 19      this outlines the reasons for termination. 20      So I'm assuming you know something about 21      these two female employees, who they are 22      and what these allegations are that 23      they've made; is that correct?</b></p>	<p style="text-align: right;">Page 139</p> <p>1       A. After. 2      <b>Q. Was she terminated, fired, or did she 3       quit?</b> 4       A. She quit. 5      <b>Q. Do you know why she quit?</b> 6       A. No, sir. 7      <b>Q. Do you know where she lives now?</b> 8       A. No, sir. 9      <b>Q. Do you know where she works now?</b> 10      A. No, sir. 11      <b>Q. What did she say about Victor Smith?</b> 12      A. I really don't know, because I don't -- 13      I'm not -- I'm not real sure what he's 14      talking about here. 15      <b>Q. Okay. Did Allison Rhodes ever make any 16      complaint to you about Victor Smith?</b> 17      A. No. 18      <b>Q. Do you know if Allison Rhodes made a 19      complaint to Terry Robertson about Victor 20      Smith?</b> 21      A. No, sir, I don't know. 22      <b>Q. Do you know if Allison Rhodes made a 23      complaint to anyone with Euro-Pro about</b></p>
<p style="text-align: right;">Page 138</p> <p>1       MR. LIGHTFOOT: Same objection. 2      A. The two females would have been Ashley 3       Sheffield and Allison Rhodes. 4      <b>Q. Okay. Back to Ashley Sheffield for a 5       moment. As I understand it, she never 6       made any allegation about sexual 7       harassment toward Victor, did she?</b> 8      A. Correct. 9       MR. LIGHTFOOT: Objection. 10      <b>Q. Now, let's go to -- The other one was 11      named --</b> 12      A. Allison Rhodes. 13      <b>Q. Allison Rhodes?</b> 14      A. Right. 15      <b>Q. Is Allison Rhodes still an employee?</b> 16      A. No, sir. 17      <b>Q. Is Rhodes still her last name?</b> 18      A. I believe she got married, but I don't 19       know what it is. 20      <b>Q. When did her employment with Euro-Pro end?</b> 21      A. I don't recall. 22      <b>Q. Do you know if it was before or after 23      Victor Smith's employment ended?</b></p>	<p style="text-align: right;">Page 140</p> <p>1       <b>Victor Smith?</b> 2      A. I'm unaware of anything. 3      <b>Q. Have you been told by someone at Euro-Pro 4       or anywhere else, other than your lawyer, 5       what kind of complaint that Allison Rhodes 6       made against Victor Smith?</b> 7      A. I'm unaware of any complaints. 8      <b>Q. Are you aware of any documentation of a 9       complaint or allegation made by Allison 10      Rhodes against Victor Smith?</b> 11      A. No, sir. 12      <b>Q. Well, my question then, Mr. Hudnall, is 13      this: This document, Plaintiff's Exhibit 14      8, refers to a problem with two female 15      employees. And I asked you who they were 16      and you told me Allison Rhodes. How did 17      you get that name?</b> 18      A. Because, while no complaint was made, at 19       some point during the discussions with 20       Ashley about the telephone call, the 21       comment was made to me that Victor had 22       asked Allison and Ashley if either one 23       would ever date a black guy. Now that I</p>

35 (Pages 137 to 140)

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## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 141</p> <p>1 think about it, that probably was part of    2 our discussion on the sexual harassment    3 side. I had honestly forgotten about it    4 till we got to this. But again, in my    5 opinion, in my estimation, it was asked    6 and answered, "You can't harass anybody.    7 Well, I know, I know. Well, we just want    8 to make sure that we all understand, we're    9 all on the same page and it's forgotten    10 about."</p> <p>11 In fact, to that end, shortly after    12 that discussion the owner of the company    13 and our H. R. representative came down for    14 a visit. We all went to dinner together.    15 And the H. R. person talked to me the next    16 day. We both noted that Ashley and    17 Allison and Victor all voluntarily left    18 the dinner together and all walked out    19 together going out to some -- to wherever    20 they went. And H. R. and myself both    21 commented how happy we were that they    22 seemed to not have a problem and that it    23 was truly -- well and truly said and done.</p>	<p style="text-align: right;">Page 143</p> <p>1 <b>Ashley when she came to you; is that</b>    2 <b>right?</b></p> <p>3 A. Correct.</p> <p>4 <b>Q. And tell me again what she told you about</b>    5 <b>Victor -- I don't know. Was it Victor had</b>    6 <b>asked about dating a black man? Is</b>    7 <b>that --</b></p> <p>8 MR. LIGHTFOOT: You want him to    9 restate it?</p> <p>10 <b>Q. Yeah. Just tell me again.</b></p> <p>11 MR. LIGHTFOOT: You already    12 answered. But --</p> <p>13 <b>Q. I'm jumbling the question.</b></p> <p>14 A. I believe the comment was something to the    15 effect that Victor had asked Ashley -- I'm    16 sorry. Ashley is white. Allison is    17 white. That Victor had asked if either    18 one of them would date a black man.</p> <p>19 <b>Q. Okay. You heard that from Ashley?</b></p> <p>20 A. Correct.</p> <p>21 <b>Q. Now, in what context did Ashley tell you</b>    22 <b>that?</b></p> <p>23 MR. LIGHTFOOT: Objection. He's</p>
<p style="text-align: right;">Page 142</p> <p>1 <b>Q. When was that dinner?</b></p> <p>2 A. I would have to look at when we -- I'd    3 have to base this on when we talked to    4 Victor about the phone call.</p> <p>5 <b>Q. Well, I know you can't remember the exact</b>    6 <b>date.</b></p> <p>7 A. Within a week of -- after talking to him    8 about the phone call. Because, again,    9 H. R. and I made the comment to each other    10 that it was -- it was really good that we    11 -- management said what they had to say.    12 The parties involved seemed to have taken    13 our -- understood where we were coming    14 from but could still remain friends.</p> <p>15 <b>Q. So that dinner would have been in the</b>    16 <b>spring of '04?</b></p> <p>17 A. I believe so. Yes.</p> <p>18 <b>Q. Do you know of any other complaint that</b>    19 <b>Allison ever had against Victor?</b></p> <p>20 A. No, sir.</p> <p>21 <b>Q. I want to go back to what you said when --</b>    22 <b>I guess you -- The reason you gave me</b>    23 <b>Allison's name is, you got that from</b></p>	<p style="text-align: right;">Page 144</p> <p>1 answered that to the best of    2 his knowledge. If you want    3 him to answer it again, he    4 can.</p> <p>5 MR. COTTLE: I do.</p> <p>6 A. To the best of my knowledge, it was during    7 the discussion about the phone call. I    8 was trying to get to the bottom of it.    9 "Do you feel like he sexually harassed    10 you?" I think that's how it went.</p> <p>11 <b>Q. Was she offended by that question, or did</b>    12 <b>she indicate to you that she was offended</b>    13 <b>by being asked that question?</b></p> <p>14 A. I don't think so.</p> <p>15 MR. LIGHTFOOT: Are you talking    16 about Ashley?</p> <p>17 MR. COTTLE: Ashley.</p> <p>18 <b>Q. Well, you didn't talk to Allison about it,</b>    19 <b>did you?</b></p> <p>20 A. I did.</p> <p>21 <b>Q. Oh, you did?</b></p> <p>22 A. And she corroborated. Is that the right    23 word?</p>

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 145</p> <p>1 Q. Yeah.  2 A. She said Victor asked her the question.  3 "Did that bother you? Well, No, not  4 really." Allison never complained. I  5 heard it. I went to Allison to confront  6 her. Yes, he asked it. This all goes  7 back into -- besides the phone call, we  8 touched on sexual harassment, making sure  9 we're not doing anything wrong.  10 Q. So you actually went to Allison and asked  11 her about a conversation Victor had with  12 her about dating a black man?  13 A. Right.  14 Q. And there's no prohibition against  15 co-employees dating?  16 A. Oh, no, no. Not at all. My reason for  17 seeing Allison was, "Were you offended by  18 being asked that question by a black man?"  19 Q. And she replied no?  20 A. No.  21 Q. Well, where do we get, if you know, the  22 allegation in paragraph 8 of this exhibit  23 about two people -- two female employees</p>	<p style="text-align: right;">Page 147</p> <p>1 Q. Okay.  2 A. It's a serious charge.  3 Q. And to your knowledge, there is no  4 documented file or documented instance of  5 Victor Smith sexually harassing anyone?  6 A. That's correct.  7 (Plaintiff's Exhibit 11 marked  8 for purposes of identification)  9 Q. I've marked this as Plaintiff's Exhibit  10 11. It's been produced in discovery in  11 this case. Do you know what that is? Can  12 you tell me what that is supposed to show?  13 MR. LIGHTFOOT: I don't know that  14 he's ever seen it.  15 A. I don't know. No. I don't know what this  16 is.  17 Q. Okay. Do you know whose handwriting that  18 is?  19 A. No, sir.  20 Q. It appears to be just an itemization of  21 deductions from Victor Smith's payroll  22 check, I guess.  23 A. Okay.</p>
<p style="text-align: right;">Page 146</p> <p>1 talking about harassment?  2 MR. LIGHTFOOT: Objection. Asked  3 and answered for the last  4 fifteen minutes.  5 A. I don't know.  6 Q. At this point in time, if a female  7 employee came to management of Euro-Pro  8 and made a complaint about sexual  9 harassment, would there be some kind of  10 documentation made about that complaint?  11 A. Absolutely.  12 MR. LIGHTFOOT: Objection. Calls  13 for speculation.  14 Q. During the period of time Victor Smith  15 worked there in 2004, if a female employee  16 had come to management of Euro-Pro and  17 complained about sexual harassment, would  18 it have been the practice and procedure of  19 Euro-Pro to document that complaint in  20 writing?  21 MR. LIGHTFOOT: Objection. Calls  22 for speculation.  23 A. I believe so.</p>	<p style="text-align: right;">Page 148</p> <p>1 (Off-the-Record discussion)  2 Q. Let's look at Plaintiff's 9. Do you know  3 what this is? This is an e-mail from Chad  4 Reese -- an e-mail correspondence between  5 Chad Reese and Victor Smith?  6 A. Yes, sir.  7 Q. Have you read over this?  8 A. Yes, sir.  9 Q. What does this refer to?  10 A. It refers to Victor trying to get some  11 information on how to build a steamer  12 fixture.  13 Q. He was asking this information of Chad  14 Reese?  15 A. Yes, sir.  16 Q. Where did this document come from?  17 A. It's a chain of e-mails between the --  18 between Victor and Chad.  19 Q. Off someone's computer?  20 A. Yes.  21 Q. Is it something that -- if you know the  22 answer to this, was this in a file  23 somewhere, or was it retrieved</p>

## FREEDOM COURT REPORTING

<p style="text-align: center;">Page 149</p> <p>1       <b>specifically in response to a discovery</b>  2       <b>request?</b></p> <p>3       A. I don't know. I don't know.</p> <p>4       <b>Q. Do you know what it purports to show?</b></p> <p>5       A. Well, it shows Victor asking -- You have  6       to read these things backwards. So you'd  7       start towards the bottom of the first page  8       where it says "Original Message. Victor  9       Smith. Sent, Friday June 25th." Next  10      page. "To Chad Reese." That's actually  11      the first e-mail.</p> <p>12      <b>Q. Yeah.</b></p> <p>13      A. Victor is asking -- he says, "Chad, I need  14      a copy of the Life test spec for steamer  15      so I can start writing the PLC program.  16      Please reply through e-mail."</p> <p>17      MR. LIGHTFOOT: Why don't you  18      just answer his questions?  19      If he wants to ask you  20      questions about it --</p> <p>21      THE WITNESS: I'm sorry.</p> <p>22      MR. LIGHTFOOT: You don't need to  23      read it to him.</p>	<p style="text-align: center;">Page 151</p> <p>1       be able to produce steam? Well, the only  2       way to do that is to fill a steamer up,  3       run it for awhile, see how long it takes  4       for the light to come on or whatever  5       indicator for the consumer comes on to let  6       the consumer know it's ready to make  7       steam, time it and steam it. If Chad  8       answers every question Victor asks in the  9       June 28th section of the e-mail, Chad is  10      doing Victor's job for him.</p> <p>11      <b>Q. Well, the questions deal with a product</b>  12      <b>that Euro-Pro manufactures, correct?</b>  13      <b>These are not questions about the machine</b>  14      <b>that Victor was building?</b></p> <p>15      MR. LIGHTFOOT: Objection.</p> <p>16      A. Right. These are questions about the --  17      But the machine Victor is building is  18      built to test these products.</p> <p>19      <b>Q. Correct.</b></p> <p>20      A. And that may change from product to  21      product.</p> <p>22      <b>Q. But are you saying that the product, in</b>  23      <b>this case the steamers that Euro-Pro</b></p>
<p style="text-align: center;">Page 150</p> <p>1       <b>Q. Okay. So we start with a request from</b>  2       <b>Victor for some specifications. Now, I</b>  3       <b>guess what I'm trying to get to is, is</b>  4       <b>there anything in here of any significance</b>  5       <b>as to why Victor Smith was terminated?</b></p> <p>6       A. It leads to it.</p> <p>7       <b>Q. And in what way?</b></p> <p>8       A. We stated previously that Victor seemed to  9       have a problem taking the whole grasp of  10      his job. And in this set of e-mails you  11      can see Victor asking a question for the  12      spec for steamers. The reply is the spec.  13      The next is asking for more information.  14      The last reply is that these are the  15      things that Victor has to figure out in  16      order to start the unit, in order to build  17      a fixture. Basically, each different  18      model steamer is different. He's asking  19      for how long it takes for the unit to  20      reach steady state. In other words, how  21      long does it take -- Once you put water  22      in, put the cap back on, start heating,  23      how long does it take for that steamer to</p>	<p style="text-align: center;">Page 152</p> <p>1       <b>builds, will all take different amounts of</b>  2       <b>time to get to a steady state?</b></p> <p>3       A. Different models will take different  4       times. They have different capacities.  5       It's going to take longer to heat a gallon  6       of water than a pint of water.</p> <p>7       <b>Q. But every model should achieve a steady</b>  8       <b>state in approximately the same amount of</b>  9       <b>time, should it not?</b></p> <p>10      A. Correct.</p> <p>11      <b>Q. And would it be helpful for Victor to</b>  12      <b>know, that as he's building this device,</b>  13      <b>to test these machines?</b></p> <p>14      A. Absolutely.</p> <p>15      <b>Q. And somebody would have that information,</b>  16      <b>would they not, of how long it takes this</b>  17      <b>certain model to get to a steady state?</b></p> <p>18      A. We would have a written specification that  19      we put out to the factory that they need a  20      window to meet. But when you get down to  21      the actual model, you have to actually  22      test it yourself.</p> <p>23      <b>Q. What I'm asking is, that information of</b></p>

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 153</p> <p>1 how long it would take model A, B 120 or 2 whatever to reach a steady state, that 3 information is available somewhere within 4 the company, isn't it?</p> <p>5 A. Not necessarily.</p> <p>6 Q. Okay. Would you agree that if the 7 information is available, it's a waste of 8 time for somebody to have to go test it to 9 come up with the same information again?</p> <p>10 A. That depends on what tests you're trying 11 to conduct and how you're trying to 12 approach your testing.</p> <p>13 Q. How long does it take for a lab technician 14 to determine the length of time it takes 15 one of these steamers to get to a steady 16 state?</p> <p>17 A. It depends on the steamer. Some fifteen 18 minutes.</p> <p>19 Q. Some longer?</p> <p>20 A. Maybe. At the same time the technician 21 could be timing one and over here doing 22 something else.</p> <p>23 Q. Okay. But it takes some amount of time to</p>	<p style="text-align: right;">Page 155</p> <p>1 Q. In fact, it makes some sense to ask 2 because it might save time, mightn't it?</p> <p>3 A. I would say it makes some sense to ask. 4 It may not save time.</p> <p>5 Q. It may or it may not; we don't know, but 6 it could, correct?</p> <p>7 A. It could.</p> <p>8 Q. And, therefore, it makes sense to ask?</p> <p>9 MR. LIGHTFOOT: Objection.</p> <p>10 A. Right.</p> <p>11 Q. Now, let me show you what I'm going to 12 mark as Plaintiff's Exhibit 12. (Plaintiff's Exhibit 12 marked 14 for purposes of identification)</p> <p>15 Q. This appears to be a Euro-Pro policy for 16 vacation time, time away from work, et 17 cetera. Is that what that is?</p> <p>18 A. It's the beginnings of the development of 19 an employee's handbook.</p> <p>20 Q. Okay. Now, is there anything with regard 21 to that policy that you would say Victor 22 Smith ever violated?</p> <p>23 A. Yes.</p>
<p style="text-align: right;">Page 154</p> <p>1 do that work?</p> <p>2 A. Yes.</p> <p>3 Q. If that information is available somewhere 4 else in the company and in somebody's 5 files or somebody's head, wouldn't it make 6 sense to ask about it and get it -- and 7 get it from wherever it already was rather 8 than to spend the time testing it when the 9 company already had the information?</p> <p>10 A. If the information is in a file somewhere, 11 then somebody has got to go find that 12 file. It may take that engineer longer to 13 find that information -- all that 14 information that's asked than it would for 15 the technician to find it himself.</p> <p>16 Q. If it would, the engineer could say that, 17 as Mr. Chad Reese has done?</p> <p>18 A. Right.</p> <p>19 Q. "Find it yourself." But certainly it 20 doesn't hurt to ask him if he knows and 21 has the information at the tip of his 22 fingers, does it?</p> <p>23 A. That's true.</p>	<p style="text-align: right;">Page 156</p> <p>1 Q. What?</p> <p>2 A. Well, at the beginning -- at first he 3 violated the protocol for time spent out 4 of the office.</p> <p>5 Q. In what way?</p> <p>6 A. When he was about to go on vacation, he 7 left early without letting me know what he 8 needed to let me know before he left 9 early.</p> <p>10 Q. Okay. What else?</p> <p>11 A. I would probably have to review more of 12 the actions. I don't see anything 13 obvious.</p> <p>14 Q. When was that policy made available to the 15 employees of Euro-Pro?</p> <p>16 A. I don't recall. I know it was published 17 December 3rd. I also know Terry went back 18 to Francine about some possible 19 modifications. But I think we put it out 20 on the 3rd of 2003 as our first start. (Plaintiff's Exhibit 13 marked 22 for purposes of identification)</p> <p>23 Q. Okay. Let me show you Plaintiff's Exhibit</p>

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 157</p> <p>1     <b>13. That's another part of the policy</b>  2     <b>manual.</b>  3     A. Okay.  4     <b>Q. Have you reviewed that before?</b>  5     A. Probably.  6     <b>Q. And that deals with what?</b>  7     A. Performance reviews.  8     <b>Q. And were the performance reviews of Victor</b>  9     <b>Smith that we've gone over and talked</b>  10     <b>about here today conducted in accordance</b>  11     <b>with that policy?</b>  12     A. Let me read it. I would have to say no to  13     that.  14     <b>Q. In what way were they not?</b>  15     A. Well, the third sentence indicates that  16     performance reviews should take place  17     during the month of April. And at the  18     earliest I reviewed with Victor was in  19     May.  20     <b>Q. Well, is that the only thing?</b>  21     A. As far as the review goes, I believe so.  22     <b>Q. Okay. Let me ask you, backing up to the</b>  23     <b>August evaluation of Victor Smith.</b></p>	<p style="text-align: right;">Page 159</p> <p>1     <b>Q. What is it?</b>  2     A. This is a handout -- Let me back up a  3     little bit. Brian McGhee, that we've  4     mentioned before, was hired into Euro-Pro  5     from Auburn University. He was a very  6     recent graduate of their Master's in  7     Electrical Engineering Program. His -- I  8     don't know for how long. But for some  9     time during his last -- during his  10     Master's work he instructed the electrical  11     engineering students at Auburn University  12     under Programmable Logic Controller  13     instruction. Programmable Logic  14     Controllers are commonly referred to as  15     PLC's within the industry. He gave a  16     general class to the students at Auburn  17     University on how to program -- generally  18     how to program PLC's. I asked him to then  19     give a class to our employees on the  20     specific direct Soft 32 program that we  21     use. So this is a handout from that class  22     that specifically details how to program  23     the exact PLC units that we use at</p>
<p style="text-align: right;">Page 158</p> <p>1     A. Okay.  2     <b>Q. I believe that's Plaintiff's Exhibit 6 or</b>  3     <b>it may be 5.</b>  4     A. Okay.  5     <b>Q. If you go to the last page where the</b>  6     <b>overall evaluations -- may be the</b>  7     <b>next-to-the-last page. There is the</b>  8     <b>number 3.5 down there on the bottom left.</b>  9     <b>I want to ask you again about what scale</b>  10     <b>that's on.</b>  11     A. Scale of 5.  12     <b>Q. Is it possibly a 1-to-4 scale?</b>  13     A. No, sir.  14     <b>Q. You're certain about that?</b>  15     A. Absolutely.  16     <b>Q. I may or may not mark this. I want to ask</b>  17     <b>you about it first. It may be irrelevant.</b>  18     <b>This document here is several pages long</b>  19     <b>that's been produced. It says "PLC</b>  20     <b>Instruction."</b>  21     A. Yes, sir.  22     <b>Q. Can you tell me what this is?</b>  23     A. Yes, sir.</p>	<p style="text-align: right;">Page 160</p> <p>1     Euro-Pro. The nomenclature may be  2     different. Some terms may be different.  3     This is detailed to the ones that we  4     purchased.  5     <b>Q. Victor Smith, did he sit in on this class?</b>  6     A. I believe so. Yes, sir.  7     <b>Q. Was any part of his job to program the</b>  8     <b>computers with this program?</b>  9     A. Yes, sir.  10     <b>Q. And was he able to do that? Did you ever</b>  11     <b>have a problem with him not properly doing</b>  12     <b>that part of his job?</b>  13     A. No, sir.  14     <b>Q. Okay. Who is Jeff Garrison?</b>  15     A. Jeff works for us.  16     <b>Q. When was he hired?</b>  17     A. December of '04.  18     <b>Q. After Victor left?</b>  19     A. I believe so.  20     <b>Q. Now, Jeff Garrison is an engineer?</b>  21     A. That's correct.  22     <b>Q. When was the decision made to hire an</b>  23     <b>engineer?</b></p>

## FREEDOM COURT REPORTING

Page 161	Page 163
<p>1 A. Honestly, I don't know.</p> <p>2 Q. <b>Who made the decision?</b></p> <p>3 A. I don't know that either.</p> <p>4 Q. <b>Do you know if the decision to hire an engineer was made before or after Victor Smith was terminated?</b></p> <p>5 A. I don't know. I'd have to guess.</p> <p>6 Q. <b>But at any rate, we do know that Jeff Garrison was hired after Victor was terminated?</b></p> <p>7 A. That's correct.</p> <p>8 Q. <b>And do you know the exact date he came in?</b></p> <p>9 MR. LIGHTFOOT: He's already said he didn't.</p> <p>10 A. I don't.</p> <p>11 Q. <b>Okay.</b></p> <p>12 A. I will say this: Jeff was part of -- I want to get this right. The word escapes me. We approached Auburn University, their electrical group -- actually, their electrical group and their mechanical group, for senior design projects. They routinely -- It's routine in the</p>	<p>1 Q. <b>Was someone else hired at the same time Jeff was?</b></p> <p>2 A. Yes, sir.</p> <p>3 Q. <b>Who?</b></p> <p>4 A. Larry Frost.</p> <p>5 Q. <b>Okay. Were they hired both in December of '04?</b></p> <p>6 A. I would say so. All coming out of this Electrical Engineering Senior Project Design Group.</p> <p>7 Q. <b>At the time Victor left, as I understand it, the steam testing device was operational but not fully operational?</b></p> <p>8 MR. LIGHTFOOT: Objection. Asked and answered. Go ahead.</p> <p>9 A. It seemed to be operational before he left. When we found the exposed wires, we were -- it then became non-operational because we weren't sure if it was safe to operate.</p> <p>10 Q. <b>Well, let me -- Right. I understand, because of the exposed wires, it was not operational. But I understood you to say</b></p>
Page 162	Page 164
<p>1 engineering field for the senior students to design a product, and that tells their professors how well they can design a project and if they deserve to graduate or not. We approached Auburn University for two electrical projects and one or two mechanical projects.</p> <p>2 Brian McGhee, as the lead of the Electrical Engineering Group, had gotten to the point where he needed help in his work, the electrical -- design of electronic circuits. Jeff and one other guy were noted during that time -- and this is -- You approach these guys at the beginning of their semester. So it would have been in September, I think, of '03, whenever school starts -- to here's a couple of projects we'd like to see if your design students could help us with. Jeff and Larry Frost were identified fairly early on as possible candidates. Once they graduated school, they were hired.</p>	<p>1 <b>earlier, exposed wires aside, it was maybe only eighty percent operational?</b></p> <p>2 MR. LIGHTFOOT: Objection. Go ahead.</p> <p>3 Q. <b>Is that what you said?</b></p> <p>4 A. Yes. That's what I said.</p> <p>5 MR. LIGHTFOOT: Objection.</p> <p>6 Q. <b>Whose job did it become after Victor's termination to bring that machine into full operation?</b></p> <p>7 A. Mine.</p> <p>8 Q. <b>What part, if any, did Mr. Garrison play in working on the steam cleaner testing device?</b></p> <p>9 A. Jeff assisted. Once I got into it and realized how much work it would take, we were faced with the choice of me doing nothing but steamers and steam cleaners or getting a little bit -- a little bit of help, and I could continue to run the other projects as well as my own workload. And, so, in that role Jeff helped.</p> <p>10 Q. <b>All right. Are you saying that it would</b></p>

## FREEDOM COURT REPORTING

<p style="text-align: center;">Page 165</p> <p>1 have been pretty much a full-time job for 2 you to work on the steam cleaner tester?</p> <p>3 A. Yes, sir. Basically, I would have had to 4 fill Victor's shoes completely. And with 5 my current workload I just didn't have 6 time.</p> <p>7 Q. So Victor's job was then divided between 8 you and Jeff Garrison; is that correct?</p> <p>9 MR. LIGHTFOOT: Objection.</p> <p>10 A. I would characterize it as saying I took 11 on the job and Jeff gave me a little help.</p> <p>12 Q. So how much of your time, after Victor 13 Smith left, was spent working on the 14 things Victor had been working on?</p> <p>15 A. Eventually that became my full-time job. 16 It eventually became my full-time job. 17 It's a full-time -- that's a full-time 18 position. In order to keep the things 19 running, you've got to have somebody back 20 there making sure they are running.</p> <p>21 Q. Is that your full-time position now?</p> <p>22 A. Pretty much.</p> <p>23 Q. And you say that no one has been hired to</p>	<p style="text-align: center;">Page 167</p> <p>1 MR. LIGHTFOOT: For what period 2 of time?</p> <p>3 Q. Well, over the first -- say the first 4 three months.</p> <p>5 A. On the steam cleaner?</p> <p>6 Q. Yeah.</p> <p>7 A. I would estimate he put what I call 8 one-man month into it. Four weeks, forty 9 hours a day, over a three-month period or 10 so.</p> <p>11 Q. So over a three-month period it was -- he 12 devoted about a third of his time to it?</p> <p>13 A. That's a fair estimate, I think.</p> <p>14 Q. Let me ask you this: If it was eighty 15 percent operational when Victor Smith 16 left, how long did it take to get it up to 17 a hundred percent?</p> <p>18 MR. LIGHTFOOT: Objection. I 19 believe he testified he had 20 to start over. But anyway, 21 go ahead.</p> <p>22 A. We did. We had to start over from 23 scratch. Not knowing -- Again, not</p>
<p style="text-align: center;">Page 166</p> <p>1 replace Victor?</p> <p>2 A. That's correct.</p> <p>3 Q. Is anyone going to be hired?</p> <p>4 A. We've had some subsequent changes. And I 5 may be changing roles, and we'll deal -- 6 bring somebody in to fill mine or Victor's 7 position at this point.</p> <p>8 Q. Is Mr. Garrison still with the company?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Is he white?</p> <p>11 A. Yes, sir.</p> <p>12 Q. What age person is he?</p> <p>13 A. I don't know.</p> <p>14 Q. He just recently graduated from Auburn 15 University?</p> <p>16 A. That's correct.</p> <p>17 Q. He's an engineer?</p> <p>18 A. Yes, sir.</p> <p>19 Q. When he came to work for Euro-Pro, 20 Mr. Garrison, how much of his -- what 21 percentage of his time would you estimate 22 was devoted to completing the steam 23 cleaner tester?</p>	<p style="text-align: center;">Page 168</p> <p>1 knowing about the wires, we had to start 2 over from scratch.</p> <p>3 Q. How long did it take to start over from 4 scratch and get it fully operational?</p> <p>5 A. I think at least two months. Maybe a 6 little longer.</p> <p>7 Q. And during that time Mr. Garrison spent 8 approximately a third of his time on that 9 project?</p> <p>10 A. I think that's fair. I mean, again, we 11 hired him because we had other things for 12 him to do.</p> <p>13 Q. Of the employees that are currently 14 employed in the Lee County facility of 15 Euro-Pro, how many of them are black?</p> <p>16 A. One.</p> <p>17 Q. And what's that employee's name?</p> <p>18 A. Duvell Robinson.</p> <p>19 Q. And he's a lab tech?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Have there been any other black employees 22 hired since Victor Smith was terminated?</p> <p>23 A. No, sir, not permanent.</p>

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 169</p> <p>1 Q. Have there been some hired temporarily?    2 A. Yes, sir.    3 Q. Through a temp agency?    4 A. Through a temp agency. Yes, sir.    5 Q. And they were not kept full-time, or they    6 were not --    7 A. I'm sorry. One more. I completely forgot    8 about Patricia.    9 Q. Patricia?    10 A. I honestly -- I don't remember her last    11 name.    12 Q. What department does she work in?    13 A. She's a lab tech now.    14 MR. LIGHTFOOT: Temp or regular?    15 THE WITNESS: She's full-time. I    16 think around June of last    17 year she was made full-time.    18 Sorry. Might have been June    19 of this year she was made    20 full-time. Sorry.    21 Q. Now, Mr. Hudnall, I want to cover one    22 other area. There's been testimony in    23 Mr. Victor Smith's deposition of the use</p>	<p style="text-align: right;">Page 171</p> <p>1 Q. You don't believe so?    2 A. No, sir.    3 Q. Have you ever repeated any routines by    4 some comedian wherein that comedian used    5 that word?    6 A. I believe so. Yes, sir.    7 Q. All right. And was Victor Smith present    8 when you repeated that?    9 A. Yes, sir.    10 Q. And as you were repeating this, did you    11 use the word "nigger"?</p> <p>12 A. No, sir.    13 Q. Did you use any other word that you would    14 consider offensive had it just been    15 mentioned in ordinary conversation?    16 A. It's hard to know what offends someone    17 without them telling you. But I don't    18 believe so.    19 Q. Okay. Did you ever hear any other    20 employee use that word or any other word    21 that you would consider to be racially    22 offensive?    23 A. No, sir.</p>
<p style="text-align: right;">Page 170</p> <p>1 of some offensive words. I want to ask    2 you this: Personally, does the use of the    3 word "nigger" offend you?    4 A. Absolutely.    5 Q. Is that a word that is frequently used    6 around the Euro-Pro factory?    7 A. No, sir.    8 Q. Do you consider it to be inappropriate to    9 use that word?    10 A. Yes, sir.    11 Q. Are there any written policies that are    12 directed toward the use of that kind of    13 offensive language?    14 A. I don't know what the 401 posters say    15 about language.    16 Q. The 401 posters being    17 anti-discrimination --    18 A. Those. Right.    19 Q. -- information?    20 Have you ever used the word "nigger"    21 during work hours in front of Victor    22 Smith?    23 A. No, sir. I don't believe so.</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. Who was the comedian that you were talking    2 about when we just went over that? David    3 Chappelle?    4 A. That would have been one. Yes, sir.    5 Q. Do you recall any conversation you ever    6 had in Victor Smith's presence where you    7 were talking about David Chappelle and    8 anything he said during a comedy routine?    9 A. We would discuss him, that he had -- About    10 the time Victor came to work for us, he    11 started a show on comedy central. I    12 thought it was a point -- a point of    13 common interest. And, so, it seemed like    14 water-cooler talk, for lack of a better    15 term. You come in the next morning. "Did    16 you see the show? Yeah, we saw the show."    17 A lot of his comedy is racially motivated.    18 But you try to say to yourself -- You're    19 trying to get the funniness across and not    20 the mean-spirited part.    21 Q. I understand. Okay. I think that's all.    22 Let me take about five minutes and then    23 we'll come back.</p>

# FREEDOM COURT REPORTING

## FREEDOM COURT REPORTING

<p style="text-align: right;">Page 177</p> <p>1 never felt a current sensor was going to 2 do the job. 3 <b>Q. Do you remember that Victor did believe 4 that that was something necessary?</b> 5 A. I remember talking about it. 6 <b>Q. Okay.</b> 7 A. I remember we did talk about it. 8 <b>Q. You don't remember any resolution that the 9 two of you came to about whether it was 10 necessary or not?</b> 11 A. I seem -- I know I expressed my hesitation 12 for such a device. I didn't understand 13 how the current sensor was going to do 14 anything over and above what we already 15 had. 16 <b>Q. Do you recall Victor saying that he would 17 be available during the vacation to come 18 back up there and put the current sensor 19 device or do any other repairs or 20 maintenance to this steam cleaner tester?</b> 21 A. I believe he said something to that 22 effect. When I called him Monday, I 23 reminded him I may need his help. And</p>	<p style="text-align: right;">Page 179</p> <p>1 A. No, sir. 2 <b>Q. Can the employees come in and work on 3 those days if they are behind or need to 4 or want to?</b> 5 A. They can. If it's going to be testing 6 work, we do require that someone else be 7 in the building for safety reasons. But 8 if a person had something that was 9 non-threatening to do, we have -- The 10 doors are magnetically locked. We all 11 have a magnetic little fob that allows you 12 access to go in and out. And most 13 everybody that has that fob also has a key 14 to the front door. 15 <b>Q. Isn't it true that Victor Smith frequently 16 worked on weekends?</b> 17 A. I don't know how frequently. I would see 18 him there occasionally on the weekends. 19 <b>Q. Saturdays and Sundays?</b> 20 A. I can't speak to Sundays. I don't work on 21 Sundays. I would come up on Saturdays and 22 he'd be there. Attendance was never a 23 problem, never a problem.</p>
<p style="text-align: right;">Page 178</p> <p>1 then when I called him back Monday, he 2 didn't answer the phone. When I called 3 him back Tuesday, he didn't answer the 4 phone. I made several calls back that 5 week he was on vacation to get this 6 fixture running. We talked Monday 7 morning. I told him, "I'm going to see 8 what I can do to get it going. If I 9 can't, I'm going to call you back." When 10 I called back, I didn't get an answer. 11 <b>Q. Did you get an answering machine?</b> 12 A. Nothing. Just the phone would ring. 13 <b>Q. How many times did you call?</b> 14 MR. LIGHTFOOT: The whole time? 15 MR. COTTLE: Yeah. 16 <b>Q. During that week.</b> 17 A. I think twice on Monday. Of course, we 18 talked once. I think I called back twice 19 on Monday and I tried another time 20 Tuesday. By that time I got frustrated 21 and gave up. 22 <b>Q. Does Euro-Pro run regular hours on 23 Saturday and Sunday?</b></p>	<p style="text-align: right;">Page 180</p> <p>1 <b>Q. That's all. Thank you.</b> 2 MR. LIGHTFOOT: I've got none. 3 4 ***** 5 FURTHER DEponent SAITH NOT 6 ***** 7 8 REPORTER'S CERTIFICATE 9 STATE OF ALABAMA, 10 MONTGOMERY COUNTY, 11 I, Jackie Parham, Certified Shorthand 12 Reporter and Commissioner for the State of 13 Alabama at Large, do hereby certify that I 14 reported the deposition of: 15 RALPH HUDNALL, 16 who was first duly sworn by me to speak the 17 truth, the whole truth, and nothing but the 18 truth, in the matter of: 19 20 IN THE UNITED STATES DISTRICT COURT 21 FOR THE MIDDLE DISTRICT OF ALABAMA 22 EASTERN DIVISION 23</p>

**FREEDOM COURT REPORTING**

Page 181

1 VICTOR SMITH,  
2 Plaintiff,  
3 versus 3:05-CV-1186-MEF  
4 EURO-PRO MANAGEMENT  
5 SERVICES, INC.,  
6 Defendant.  
7

8 on Wednesday, the 4th day of October, 2006.

9 The foregoing 180 computer-printed pages  
10 contain a true and correct transcript of the  
11 examination of said witness by counsel for the  
12 parties set out herein. The reading and signing  
13 of same is hereby not waived.

14 I further certify that I am neither of kin  
15 nor of counsel to the parties to said cause, nor  
16 in any manner interested in the results thereof.  
17  
18

19 JACKIE PARHAM, Certified  
20 Shorthand Reporter and  
21 Commissioner for the State  
22 of Alabama at Large  
23

## FREEDOM COURT REPORTING

Page 182

<b>A</b>	<b>address</b> 6:3,10 6:22 8:18 39:20 58:4 63:8	11:9 17:7 25:6 25:7,10 180:9 180:13,21 181:22	<b>answer</b> 16:20,22 26:13 42:23 49:10 58:7 62:5 95:6	<b>APPEARING</b> 2:3,12
<b>ability</b> 57:2,15	<b>addresses</b> 10:11	<b>Alexander</b> 5:10	103:19 117:12	<b>appears</b> 18:20 147:20 155:15
<b>able</b> 39:17 57:11 72:2 116:2 120:10 121:12 128:18 151:1 160:10 175:3	<b>advice</b> 78:15 105:11,13 111:23 112:9	<b>aligned</b> 52:19 140:9 145:22	134:11,18 137:10 144:3 148:22 149:18 178:2,3,10	<b>appliances</b> 11:22
<b>Absolutely</b> 51:1 110:11 146:11 152:14 158:15 170:4	<b>advised</b> 112:3	<b>allegations</b>	<b>answered</b> 49:18 95:5 135:17 141:6 143:12	<b>applicable</b> 12:15 <b>apply</b> 12:16 <b>appraisal</b> 80:1 <b>approach</b> 61:17 153:12 162:14
<b>accept</b> 82:22 134:3 136:11	<b>affairs</b> 128:14	<b>Allison</b> 138:3,12 138:13,15	144:1 146:3 163:15 174:22	<b>approached</b> 77:18 115:14 115:15,21
<b>acceptable</b> 120:5	<b>affiliated</b> 21:8 21:15,19	141:17 142:19 143:16 144:18 145:4,5,10,17	<b>answering</b> 178:11	161:19 162:5
<b>accepted</b> 66:11 66:14	<b>affiliation</b> 21:22	<b>Allison's</b> 142:23	<b>answers</b> 5:17 21:4 31:2 151:8	<b>appropriate</b> 61:12 63:5 101:15
<b>access</b> 104:4 127:18 179:12	<b>affirmative</b> 57:22	<b>allow</b> 28:18 58:23 72:4	<b>anti-discrimin...</b> 170:17	<b>approved</b> 79:15 <b>approximately</b>
<b>accomplish</b> 108:21	<b>afraid</b> 82:13 83:17 118:4	118:12 127:20 127:20	<b>anybody</b> 20:12 22:3,22 23:1	1:23 27:15 152:8 168:8
<b>accomplished</b> 37:22 84:3	<b>afternoon</b> 93:22 135:5 173:10 173:14,15,22	<b>allows</b> 127:15,17 127:17 129:12	64:11 87:10 98:23 105:10	<b>April</b> 68:1 77:1 157:17
<b>accomplishing</b> 82:18 84:18	<b>age</b> 95:11 166:12	179:11	<b>American</b> 98:18	<b>area</b> 9:23 16:5 70:7,9 80:4,14
<b>accord</b> 67:10	<b>agency</b> 33:22 169:3,4	<b>amount</b> 69:14 152:8 153:23	80:20 81:3,14 83:5,5,7,23	80:20 81:3,14 83:5,5,7,23
<b>Accused</b> 137:1	<b>aggressive</b> 89:16	<b>amounts</b> 152:1	84:20,21 97:21	84:20,21 97:21
<b>achieve</b> 152:7	<b>ago</b> 16:9 17:6	<b>AmSouth/Har...</b>	97:22 133:11	97:22 133:11
<b>action</b> 48:8	<b>agree</b> 60:5 67:10 135:14,20 153:6 175:22	2:16 176:15	167:20	169:22
<b>actions</b> 156:12	<b>agreed</b> 3:2,19	<b>analog</b> 121:21 121:22	<b>apart</b> 86:7 92:9 103:5 132:20	<b>areas</b> 80:23 82:21 84:16
<b>active</b> 134:14	<b>agreement</b> 1:17	<b>analyses</b> 128:6	<b>apartment</b> 9:21	<b>arising</b> 61:11
<b>actual</b> 8:17 30:11 73:17 152:21	<b>ahead</b> 33:5 49:19 50:10 56:16 68:18	<b>analysis</b> 132:15	<b>apartments</b> 9:22	<b>arrested</b> 16:16 16:21
<b>actuate</b> 107:23	95:5 103:19 163:15 164:4	<b>analyst</b> 86:3	<b>apparently</b> 94:13	<b>Ashley</b> 19:7 53:15 54:3,6
<b>actuation</b> 75:2	167:21	<b>analyze</b> 132:21	<b>appear</b> 46:9 64:2 126:20	91:15 92:10,13
<b>add</b> 57:8 79:11 114:11	<b>air</b> 107:22 108:3 108:4	<b>Andres</b> 53:15 54:3 104:23	<b>appearance</b> 96:3 96:22	93:23 96:4 102:22 138:2,4
<b>adding</b> 63:19 102:6	<b>Alabama</b> 1:2,20 1:22 2:7,17 3:8	105:1 110:17 110:18	<b>APPEARAN...</b> 2:1	140:20,22 141:16 143:1
<b>addition</b> 130:21	6:5 10:23 11:5	<b>annual</b> 43:1	<b>appeared</b> 127:4	143:15,16,19
<b>additional</b> 84:3		<b>annually</b> 43:9		
<b>additionally</b> 90:20		43:10,11		

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## FREEDOM COURT REPORTING

Page 183

143:21 144:16	<b>assumption</b>	A-1 34:2	11:23	133:3 159:3
144:17	103:15	<b>a.m</b> 1:23	<b>becoming</b> 133:4	164:19,19
<b>aside</b> 164:1	<b>assumptions</b>	<b>B</b>	<b>began</b> 53:8	<b>black</b> 55:11,14
<b>asked</b> 6:11	113:6	<b>B</b> 2:13 153:1	122:16	140:23 143:6
17:18 19:16	<b>ASTM</b> 98:19	<b>back</b> 7:12 24:13	<b>beginning</b> 10:12	143:18 145:12
26:14 35:5	<b>attach</b> 108:6	37:20 47:16	122:20 156:2	145:18 168:15
38:13 49:18	<b>attempt</b> 121:7	48:10 62:1,4	162:15	168:21
63:20 77:9	<b>Attendance</b>	62:12 63:5	<b>beginnings</b>	<b>block</b> 95:9
95:4 120:2	179:22	72:9 74:22	155:18	<b>blocked</b> 94:22
123:5 130:13	<b>attended</b> 8:22	84:20,22,23	<b>BEHALF</b> 2:3,12	94:23 95:1
135:16 140:15	<b>attention</b> 114:7	92:3 97:20	<b>believe</b> 11:13	<b>blow</b> 71:3
140:22 141:5	126:16,19	101:21 102:5	14:1,5 17:15	118:17,17
143:6,15,17	<b>Auburn</b> 9:21,23	102:22 105:12	18:1 20:6,18	<b>blown</b> 119:4
144:13 145:2,6	10:3 14:16,17	119:10 120:4	21:6 23:13	<b>blows</b> 119:4
145:10,18	14:19,20 23:9	120:11,13,14	26:8 42:9	<b>blueprint</b>
146:2 154:14	25:8,15 26:3	120:18 121:1,9	46:10,20 83:16	105:21 106:12
159:18 163:14	26:20 27:2,16	122:6 123:19	88:18 92:11	108:23
174:21 176:19	32:12,22 33:7	128:19 132:9	114:21 119:21	<b>board</b> 33:7,8
<b>asking</b> 50:18	34:7 40:3,18	133:1 138:4	123:16 125:6	35:9
51:21 88:8	159:5,11,16	142:21 145:7	126:4,17	<b>boiling</b> 102:2
111:8 121:5	161:19 162:5	150:22 156:17	130:19 138:18	<b>bomb</b> 118:13,13
148:13 149:5	166:14	159:2 165:19	142:17 143:14	<b>bonus</b> 52:22
149:13 150:11	<b>August</b> 45:23	172:23 173:23	146:23 157:21	60:10,12
150:13,18	79:5,21 80:1	177:18 178:1,3	158:2 160:6,19	<b>bonuses</b> 97:23
152:23 173:21	130:16,18,19	178:4,9,10,18	167:19 170:23	98:4,5 136:22
<b>asks</b> 17:16 151:8	157:23	<b>backing</b> 157:22	171:1,6,18	<b>born</b> 8:4 11:1
<b>aspects</b> 80:8,17	<b>authority</b> 27:19	<b>backwards</b>	176:9 177:3,21	<b>boss</b> 14:6 64:19
81:5,11,15	28:1 36:10	149:6	<b>belittle</b> 116:9	64:20
87:12	104:11,14	<b>base</b> 95:17 142:3	<b>belittling</b> 116:8	<b>Boston</b> 24:21
<b>assemble</b> 56:22	<b>authorized</b>	<b>based</b> 84:15	<b>belligerent</b> 59:6	25:6,12,18
<b>assessment</b>	36:14,15	103:15 108:18	<b>best</b> 11:4,8	26:20 31:7
135:14	<b>automated</b> 72:6	<b>bases</b> 96:18	95:16,21 144:1	<b>bother</b> 145:3
<b>assign</b> 136:1	86:23	<b>basic</b> 106:1	144:6	<b>bottom</b> 144:8
<b>assigned</b> 57:3,16	<b>automatic</b> 74:19	<b>basically</b> 69:3	<b>better</b> 52:20	149:7 158:8
63:18 82:19	75:6	71:15 85:21	69:17,19 71:9	<b>bought</b> 101:18
103:5 109:9,15	<b>available</b> 110:18	96:17 98:22	116:15,16	101:19 135:2,4
110:18 132:5	110:19,20	121:5 127:14	136:12 172:14	<b>Bowles</b> 1:20 2:5
<b>assistance</b> 82:14	153:3,7 154:3	129:12 134:16	<b>big</b> 73:9	<b>break</b> 92:1,2,21
104:4 111:17	156:14 177:17	150:17 165:3	<b>Birmingham</b>	92:22 93:7,10
<b>assisted</b> 164:15	<b>Avenue</b> 2:15 6:4	<b>basis</b> 43:1	2:17	93:12,14 97:3
<b>assume</b> 15:3	<b>aware</b> 50:20	110:21 134:20	<b>birth</b> 6:6	97:6
39:4 124:19	52:4 61:8	<b>battery-charged</b>	<b>bit</b> 12:12 14:2	<b>breaks</b> 91:22
<b>assuming</b>	124:5 140:8		59:4 84:22	92:4,8 93:17
137:20	151:3		89:22 128:3	93:20

367 VALLEY AVENUE  
 (205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

## FREEDOM COURT REPORTING

Page 184

Brewster's 135:2	built 74:12 82:3 82:4 151:18	case 5:14,17 16:11 59:21 126:10,18 147:11 151:23	chain 148:17 challenge 77:19 82:9 chance 79:10 116:10	159:21 160:5 clean 64:23 83:13 84:1,21 97:21,22
Brian 65:20 104:23 105:4 110:19 111:19 111:22,23 112:2,3,6,11 112:12 159:3 162:8	business 11:20 24:4,4 70:18 71:15 94:6 busy 64:3 buy 31:23 70:22 101:19 102:3 110:4 113:12	cases 99:7 111:2 catch 71:5 73:9 cause 181:15 caused 58:11 61:14 64:5 65:17 83:2	change 14:2 35:1,4 67:15 78:22 103:22 104:7,16 108:9 108:13 128:1 136:17 151:20	Cleanability 32:14,15 34:12 34:14 58:3 64:17 68:10 69:9 90:8 98:14 99:9,19 cleaner 34:16,21 34:22 74:7,12
Brian's 112:14	buying 101:14 113:4 114:4 176:23	centered 125:17 central 172:11	changed 133:13 133:21 134:1,8 135:8,13 136:15	74:13,17 75:11 82:5,8 87:5 93:2 98:22
briefly 40:12	<b>C</b>	certain 17:16 65:22 99:6 105:6 111:2,14 152:17 158:14	changes 36:16 84:2 108:16 166:4 changing 83:1 166:5	101:16,23 102:1,15 105:14 106:20 111:4 112:22 116:2 118:2
bring 17:16 19:13 20:9 64:13 75:7 100:17,22 101:4 114:6 135:4 164:9 166:6	call 30:21 70:16 91:18 94:7,16 94:22,22 95:10 99:4 119:11 120:17 133:9 140:20 142:4,8 144:7 145:7 167:7 176:12	certainty 42:22 45:1 105:3 154:19	CERTIFICA... 180:8 certification 32:9	Chappelle 172:3 172:7 characterizati... 49:9
broke 58:21	178:9,13	Certified 1:18 3:6 180:11 181:19	CERTIFICA... 180:8 certification 32:9	119:13 120:13 120:15,20
Brookfield 8:14	called 11:11 22:7 28:8 29:5 91:8,14 96:1	certify 180:13 181:14	characterize 55:17 165:10	121:17 125:17 164:13 165:2
broom 83:17	177:22 178:1,2	cetera 52:22 155:17	charge 11:15 14:16,20 30:22 36:5 68:8 98:12 147:2	166:23 167:5 175:4,13 177:20
brought 38:2 70:4 126:11,15 126:18 135:1	178:10,18	calling 92:18 94:11 95:8	charged 16:17 check 112:2 147:22	cleaners 11:22 11:23 32:17 34:15 70:11,12
budget 109:21 109:22,23	calling 92:18 94:11 95:8	calls 96:23 146:12,21 178:4	chest 119:19 child 7:3	74:10 87:1 99:1 106:21 118:10,19
bugs 117:7,10	Campbell 8:16	Campbell 8:16 candidates 162:21	China 26:21,23	164:18
build 73:5,20 78:14,16 101:17 104:6 105:21,22 109:2 117:8 148:11 150:16	cap 74:21 150:22	104:19,20 107:9 109:17 110:15 111:18	choice 82:12 164:17	cleaning 81:23 82:1 83:21 84:19
building 72:4 76:7,17 81:21 102:15 104:5 105:20 106:14 106:18 116:20 119:3 151:14 151:17 152:12 179:7	capacities 152:4	119:17,18,23 125:6 148:3,5	circuits 162:12 circumstances 126:13,15	clean-up 133:10 clear 83:6 87:20 96:17
builds 152:1	Car 16:11	148:13,18 149:10,13	Civil 3:17 151:7,9 154:17	close 74:22 103:3,6
	care 120:3	151:7,9 154:17	claim 11:2 99:2	closely 134:9,19
	carefully 58:5	Chad's 14:5	class 159:16,19	closing 77:10
	carpets 93:3,4	95:23 110:16		

367 VALLEY AVENUE  
(205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

## FREEDOM COURT REPORTING

Page 185

<b>clothes</b> 70:12 72:7,11,13	79:11 86:20 89:23 134:6,7	140:7 <b>complete</b> 17:21 57:2,12 109:4 114:2	70:15 93:2 106:5 128:5 153:11	<b>construction</b> 78:17
<b>cobble</b> 72:2	<b>commission</b> 3:9	<b>completed</b> 116:19	<b>conducted</b> 18:11 68:14,15 127:23 129:10 157:10	<b>consumer</b> 70:21 71:13 151:5,6 <b>consumer's</b> 131:13
<b>code</b> 6:8,10,12	<b>Commissioner</b> 1:19 3:7 180:12 181:21	<b>completely</b> 15:2 117:2 165:4 169:7	<b>conducting</b> 43:23	<b>contact</b> 110:13 <b>contain</b> 181:10 <b>contained</b> 79:23
<b>cold</b> 85:6	<b>common</b> 172:13	<b>completes</b> 132:17,18	<b>conference</b> 106:23	<b>contend</b> 19:19 <b>context</b> 143:21 <b>continue</b> 35:7
<b>Colorado</b> 38:16 38:18 40:7	<b>commonly</b> 159:14	<b>completing</b> 166:22	<b>confident</b> 21:20 <b>confirm</b> 42:7 50:19	36:1 71:14 89:3 117:19 118:12 164:20
<b>come</b> 33:13 50:23 64:22 71:10 84:5 88:22 89:19,19 92:3 111:3,9 111:22 114:1 130:17,19 134:7,17 146:16 148:16 151:4 153:9 172:15,23 176:13 177:17 179:2,21	<b>communicated</b> 60:23	<b>completion</b> 113:3	<b>confront</b> 145:5 <b>confrontation</b> 59:9 88:15 90:3	<b>contributor</b> 80:8 81:5,16 87:13 <b>control</b> 61:18 <b>Controller</b> 129:3 159:12
<b>comedian</b> 171:4 171:4 172:1	<b>communicating</b> 58:3 59:4	<b>complex</b> 116:12	<b>confrontations</b> 59:2	<b>Controllers</b> 159:14
<b>comedy</b> 172:8 172:11,17	<b>Communication</b> 81:8	<b>complexity</b> 117:9	<b>confronting</b> 89:16	<b>controls</b> 85:3 127:10
<b>comes</b> 66:3 71:10 78:8 97:1 119:22 121:9 151:5	<b>companies</b> 21:9 23:5 24:1,14 71:11	<b>component</b> 113:8,10	<b>confused</b> 21:17 26:12	<b>conversation</b> 95:22,23 96:23 145:11 171:15
<b>coming</b> 24:13 31:21 106:11 142:13 163:8	<b>company</b> 11:11 12:8 21:11 22:6,9 23:16 24:9,16 26:10	<b>components</b> 113:13,19	<b>confusing</b> 135:6	172:5 173:7 174:7,9
<b>commencing</b> 1:23	43:7 48:7 59:18 60:8 74:4 91:10	<b>computer</b> 85:3 127:16,17,21 128:19,23	<b>conjunction</b> 107:16	<b>conversations</b> 63:20 65:3 124:1
<b>comment</b> 57:10 66:12 100:17 111:21 122:6 130:8 140:21 142:9 143:14 174:22	<b>company's</b> 52:17,19	<b>computers</b> 160:8	<b>connect</b> 129:2 <b>connected</b> 118:7 130:23	<b>convicted</b> 16:22 17:3
<b>commented</b> 141:21	<b>compensation</b> 59:20 60:13 84:4 98:6	<b>computer-pri...</b> 181:9	<b>connotation</b> 131:11	<b>cook</b> 73:1
<b>commenting</b> 66:13	<b>complain</b> 84:14 103:8	<b>concept</b> 31:20 60:20 108:16	<b>consider</b> 31:10 170:8 171:14	<b>cooker</b> 118:21
<b>comments</b> 79:11	<b>complained</b> 145:4 146:17	<b>concern</b> 84:18 115:17	<b>concerned</b> 171:21 175:5 176:23	<b>cookers</b> 118:17
	<b>complains</b> 66:4	<b>complaint</b> 106:17 119:9	<b>consistently</b> 80:22	<b>cool</b> 75:6
		<b>conclusion</b> 127:7 133:21	<b>constantly</b> 83:1	<b>Cooper</b> 2:14
		<b>condition</b> 117:6 119:21	<b>constitute</b> 95:11	<b>Cooperation</b> 81:2
		<b>conditions</b> 123:10	<b>construct</b> 107:12,15	<b>Copies</b> 18:9
		<b>conduct</b> 32:2	<b>constructing</b> 113:1	<b>copy</b> 149:14
				<b>corner</b> 73:7

## FREEDOM COURT REPORTING

Page 186

<b>corporate</b> 25:23	<b>counsel</b> 3:3	<b>critical</b> 65:3	<b>day-to-day</b>	<b>Depo</b> 4:3
<b>Corporation</b>	100:8,21	<b>critique</b> 116:6	65:15	<b>DEPONENT</b>
22:7,23	181:11,15	<b>current</b> 63:18	<b>deal</b> 121:8	180:5
<b>correct</b> 11:12	<b>counseled</b> 88:11	84:15 128:12	151:11 166:5	<b>deposition</b> 1:16
19:21 20:5	89:14 90:10,14	128:13 165:5	<b>dealing</b> 34:14	3:4,15,22
21:4 23:7,8,17	90:18 91:12	175:14,19,23	<b>deals</b> 98:12	15:21 17:13
25:9 26:1,4	92:12,16 94:3	176:5,7,11,15	133:10 157:6	40:13,23
29:9 33:15,23	94:4 97:8	177:1,13,18	<b>December</b> 27:7	169:23 180:14
44:16 45:11	100:2,7 102:13	<b>currently</b>	27:14 33:15	<b>description</b> 4:7
47:17 49:3	<b>count</b> 30:9	168:13	35:1 36:4 37:7	12:13 41:13,16
56:4 57:20	<b>counties</b> 7:21	<b>cursing</b> 59:22	51:22,23	107:11,14
60:11 63:9,12	<b>country</b> 25:1	<b>cycles</b> 129:9	114:21 133:19	<b>descriptions</b>
63:14 67:8,20	<b>County</b> 7:8,11	<b>cylinder</b> 107:22	135:9 156:17	28:22,22
69:10,12 71:18	8:1,16 168:14	108:5,6	160:17 163:6	<b>deserve</b> 84:13
75:19 76:1,15	180:10	<b>cylinders</b> 108:6	<b>decision</b> 38:11	162:4
77:6 79:22	<b>couple</b> 30:13,15		115:3,7 160:22	<b>design</b> 11:21
80:18,23 81:11	32:17 46:7	<b>D</b>	161:2,4	12:4,6,9 25:19
85:17 94:9	54:8 84:5	<b>daily</b> 134:20	<b>deductions</b> 4:15	26:2,6 62:12
96:5 99:20	112:5 121:3	<b>date</b> 6:6 45:16	147:21	71:7 104:6
101:15 102:12	162:18	45:21 79:5,16	<b>deep</b> 72:16,19	105:17,22
102:20,21	<b>course</b> 53:17	79:17,19,20	73:8	108:17 161:22
103:14,20,20	70:20 93:19	113:4 114:16	<b>defendant</b> 1:10	162:2,3,11,19
103:23 109:3	96:13 99:21	140:23 142:6	2:12 19:3,4	163:10
110:4 124:11	100:2 104:19	143:18 161:12	181:6	<b>designing</b> 76:7
125:4 130:5	178:17	<b>dates</b> 79:7	<b>Defendant's</b>	76:17 77:20
131:19 133:18	<b>courses</b> 9:2	115:19	20:17	104:5 105:19
137:23 138:8	<b>court</b> 1:1 31:16	<b>dating</b> 143:6	<b>definite</b> 136:17	112:23
143:3,20 147:6	126:18 180:20	145:12,15	<b>degree</b> 9:5 32:8	<b>designs</b> 62:17
151:12,19	<b>cover</b> 95:17,20	<b>David</b> 19:12	105:5	<b>desk</b> 119:11
152:10 155:6	169:21	53:16,18 54:1	<b>degreed</b> 110:14	<b>detail</b> 93:1
160:21 161:11	<b>covered</b> 58:22	172:2,7	<b>delineate</b> 66:1	107:19
165:8 166:2,16	<b>covering</b> 96:17	<b>day</b> 1:22 36:9	<b>demonstrated</b>	<b>detailed</b> 113:2
181:10	<b>co-employee</b>	44:9 46:22	57:2	160:3
<b>correction</b> 62:13	59:13	86:11 89:10	<b>department</b>	<b>details</b> 107:1,19
<b>correspondence</b>	<b>co-employees</b>	91:19 92:6,7	169:12	111:20 159:22
19:2 148:4	18:4 60:11	95:10 97:7	<b>depend</b> 111:10	<b>determine</b> 71:12
<b>corroborated</b>	96:7 145:15	122:18 123:3	<b>Dependability</b>	86:4 121:20
144:22	<b>Co-workers</b>	123:22 132:4	80:20	153:14
<b>costing</b> 102:17	58:2	135:2 141:16	<b>dependable</b>	<b>determining</b>
114:8	<b>cream</b> 135:2,5	167:9 174:12	82:16	52:21
<b>Cottle</b> 1:21 2:4,5	<b>create</b> 134:13	181:8	<b>depended</b> 111:9	<b>develop</b> 56:22
5:6,13 50:10	<b>creep</b> 85:14	<b>days</b> 179:3	<b>dependents</b> 7:1	<b>developing</b>
144:5,17	<b>crew</b> 58:3	<b>daytime</b> 69:21	depends 153:10	86:23
178:15	<b>criminal</b> 16:17	70:5	153:17	<b>development</b>

## FREEDOM COURT REPORTING

Page 187

155:18	118:3 119:14	148:16 158:18	<b>duty</b> 65:6	<b>EI</b> 9:1 11:2
<b>device</b> 76:18	120:21	<b>documentation</b>	<b>Duvell</b> 54:23	<b>electrical</b> 105:5
85:10 113:11	<b>discourage</b>	49:13 140:8	55:1,3,11	121:23 159:7
121:21 129:1,1	91:23	146:10	168:18	159:10 161:20
131:21 152:12	<b>discovery</b>	<b>documented</b>		161:21 162:6,9
163:12 164:14	147:10 149:1	49:5 147:4,4	<b>E</b>	162:11 163:9
175:14,20,23	<b>discuss</b> 46:21	<b>documents</b> 18:2	<b>eagerly</b> 56:20	<b>Electrolux</b> 98:23
176:7,11,21	60:16,21 78:1	18:9 19:13	<b>earlier</b> 90:1	<b>electronic</b> 9:4
177:12,19	78:2 172:9	46:9 47:23	113:5 164:1	162:12
<b>devices</b> 77:20	<b>discussed</b> 60:2	49:21	<b>earliest</b> 157:18	<b>eleven</b> 30:5
<b>devoted</b> 166:22	79:17,18	<b>doing</b> 64:14,15	<b>early</b> 22:16	88:14
167:12	115:22 130:6	65:12 68:6,7	123:5,8 156:7	<b>eliminated</b> 38:1
<b>diagram</b> 109:1	<b>discussing</b> 59:18	69:9 75:20	156:9 162:21	<b>Elizabeth</b> 9:16
<b>difference</b> 31:11	59:19 60:10	77:22 78:6	174:12,18	<b>employed</b> 13:11
79:7	95:15	82:20 84:9,14	175:5,10	27:1 42:12
<b>different</b> 22:1	<b>discussion</b> 10:18	85:15 94:14	<b>easier</b> 128:3	168:14
24:22 27:23	47:4 90:1	110:14 128:9	<b>easily</b> 101:2	<b>employee</b> 4:8
45:10 68:23	97:23 98:4	145:9 151:10	106:20 127:21	18:17 19:3
112:4 113:21	120:1 121:14	153:21 160:11	128:1	23:11 34:23
128:15,20,20	125:8 136:22	164:17	<b>EASTERN</b> 1:3	40:18,20 43:18
150:17,18	141:2,12 144:7	<b>door</b> 31:22 74:2	180:22	48:4,7,14,19
152:1,3,3,4	148:1	179:14	<b>easy</b> 64:19,20	49:23 51:14
160:2,2	<b>discussions</b>	<b>doors</b> 179:10	127:18	52:8,16,18,20
<b>difficult</b> 66:1	63:23 98:2	<b>doubt</b> 110:8	<b>education</b> 77:16	55:4 68:11
96:14	106:2 115:6	<b>downtown</b> 9:21	<b>effect</b> 52:23	74:4 91:8,13
<b>dinner</b> 141:14	140:19 175:15	9:23 10:2	60:12 97:4	93:17 112:18
141:18 142:1	<b>dismissed</b> 126:9	<b>dozen</b> 100:11	100:20 120:8	114:19 116:7
142:15	<b>disrespectful</b>	101:2 102:7	143:15 177:22	138:15 146:7
<b>direct</b> 39:19	59:13 60:6	<b>draw</b> 65:9	<b>effervescent</b>	146:15 171:20
159:20	89:17	105:17	135:22	<b>employees</b> 42:15
<b>directed</b> 170:12	<b>distance</b> 92:9	<b>drawing</b> 4:14	<b>efficiently</b> 68:14	44:1,13 53:22
<b>direction</b> 122:11	<b>DISTRICT</b> 1:1	107:4,6,8	<b>eight</b> 27:12	59:20 60:15,23
<b>directly</b> 39:12	1:2 180:20,21	108:19	88:13	69:18 90:21
103:16	<b>divided</b> 165:7	<b>drew</b> 107:9	<b>eighty</b> 117:4	98:2 136:23
<b>dirt</b> 35:21	<b>division</b> 1:3 74:8	<b>driving</b> 16:6	164:2 167:14	137:3,5,21
<b>dirts</b> 68:23	76:6,13 80:13	<b>drug</b> 114:9	<b>either</b> 3:16 7:21	140:15 145:23
<b>disagree</b> 176:3,4	180:22	<b>Dubois</b> 1:21 2:6	34:2 35:10	156:15 159:19
<b>disagreed</b> 61:4	<b>document</b> 17:14	<b>due</b> 92:23	37:20 60:6,12	168:13,21
98:8	17:20 18:19	<b>DUI</b> 17:2,5	61:22 74:2	179:2
<b>discharging</b>	47:1,7,9 50:2	<b>duly</b> 5:3 180:16	85:18 86:8	<b>employee's</b>
119:6	52:2 79:3	<b>duress</b> 73:4	116:14 119:3	51:16 52:2
<b>disciplinary</b>	126:14,16	<b>duties</b> 35:1	132:17 140:22	155:19 168:17
48:8	137:9,14,15	78:21 83:23	143:17 161:3	<b>employment</b>
<b>disconnected</b>	140:13 146:19	100:4,10,22	174:4	33:21 34:3

## FREEDOM COURT REPORTING

Page 188

54:4,7 67:15	<b>essentially</b> 25:14	43:13 44:1,4	<b>exhausted</b> 75:4	<b>expressed</b> 61:4
78:23 88:12	<b>estimate</b> 166:21	44:12,22,23	<b>exhibit</b> 17:9,12	96:15 133:23
115:4 124:7	167:7,13	45:3,5,7,20	20:13,16 41:2	177:11
138:20,23	<b>estimation</b> 141:5	56:10,17 58:12	41:4,9,11,21	<b>extent</b> 42:21
<b>ended</b> 91:19	<b>et</b> 52:22 155:16	61:15 63:16	42:1 43:15	49:17 102:9
138:23	<b>Euro-Pro</b> 1:8	64:6 65:18	44:15,18,20	135:16 137:8
<b>engineer</b> 31:10	11:11,18 12:14	66:17 67:3	45:8,14,21	174:21
31:14 32:1,7	12:19,23 13:11	79:4 80:6	46:4,6,14,16	<b>extra</b> 136:6
37:3 48:10	13:16,18,20	86:19 89:12	47:13,15 52:13	<b>Extremely</b> 61:5
86:9 104:20	15:10 21:12,15	97:13 157:23	55:21 67:1	<b>e-mail</b> 4:13
110:14,17	21:20,22,23	<b>evaluations</b>	79:3 88:5	39:20 47:15
112:16 154:12	22:1,4,19	18:17 44:8	97:13 107:2,5	148:3,4 149:11
154:16 160:20	23:12,14 24:5	50:14 52:12	125:20 126:14	149:16 151:9
160:23 161:5	24:7,9,15,20	87:15 99:22	140:13 145:22	<b>e-mails</b> 148:17
166:17	24:23 26:19	102:10 132:7	147:7,9 155:12	150:10
<b>engineering</b> 9:4	32:22 34:1,5	135:10 158:6	155:13 156:21	<b>E.P</b> 22:7
105:2,5 110:9	37:10 39:3,6	<b>eventually</b> 22:18	156:23 158:2	<b>F</b>
133:2,7 159:7	40:11,14,17	133:4 165:15	<b>exists</b> 50:7	<b>faced</b> 164:17
159:11 162:1,9	42:12,18 44:1	165:16	<b>exit</b> 18:10 50:5	<b>facilities</b> 24:23
163:9	46:8 48:23	<b>everybody</b> 38:2	125:21	<b>facility</b> 14:18,21
<b>engineers</b> 29:10	49:23 51:7,15	55:19 83:20	<b>expand</b> 135:19	23:9,11 26:3
29:12,19,22	52:1,5 53:8,23	106:16 135:5	<b>expectations</b>	26:16,19 27:2
30:2,4,7,11,17	54:4,7 62:17	179:13	135:11	27:21 28:5
30:18 31:12,13	70:10 73:23	<b>everybody's</b>	<b>expected</b> 84:2	32:23 34:7
32:1,5,5	98:23 112:18	134:15	86:10 107:20	40:17 103:4
111:17	114:19 127:5	<b>evidence</b> 3:15	110:6 113:3	168:14 173:7
<b>enjoined</b> 65:2	131:23 135:23	<b>evident</b> 116:1	<b>expenditure</b>	<b>fact</b> 77:7 92:13
<b>ensure</b> 12:14	138:20 139:23	<b>exact</b> 34:10	113:15	96:20 119:23
<b>entire</b> 31:15	140:3 146:7,16	142:5 159:23	<b>experience</b>	126:17 141:11
36:18 44:22	146:19 151:12	161:12 175:1	77:17,21	155:1
71:22 82:22	151:23 155:15	<b>exacting</b> 82:18	104:15	<b>factory</b> 31:22
101:11	156:15 159:4	<b>exactly</b> 75:16	<b>experiences</b>	152:19 170:6
<b>entitled</b> 93:17	160:1 166:19	89:9 119:20	77:15	<b>fail</b> 71:2 116:22
<b>environment</b>	168:15 170:6	<b>examination</b> 5:5	<b>explain</b> 36:13	<b>failed</b> 86:10,18
134:14	173:7 178:22	181:11	76:20 79:7	112:23 132:15
<b>equal</b> 92:8	181:4	<b>example</b> 72:16	<b>explained</b>	132:22 133:6
<b>equipment</b>	<b>evaluate</b> 42:18	83:19 84:19	120:19	<b>fails</b> 71:2 132:18
61:20 117:23	70:19	<b>exceeding</b>	<b>explode</b> 118:14	<b>failure</b> 132:14
<b>escape</b> 73:17	<b>evaluating</b> 42:14	135:11	<b>explosion</b>	132:23
<b>escapes</b> 161:18	53:3 71:6	<b>exception</b> 96:19	118:22	<b>failures</b> 86:4
<b>especially</b> 65:20	131:22	<b>excessive</b> 90:15	163:22 164:1	<b>fair</b> 39:3 62:18
174:3	<b>evaluation</b> 4:8,9	90:22	<b>express</b> 127:3	66:15 68:5
<b>ESQUIRE</b> 2:4	18:20 42:3,8	<b>excuse</b> 77:4	134:3	70:21 167:13
2:13	42:11 43:2,8	<b>executive</b> 83:16		

## FREEDOM COURT REPORTING

Page 189

168:10	41:14 44:16	149:7,11 156:2	44:4 50:15	funnel 104:21
<b>fairly</b> 113:11	46:12 47:10,21	156:20 158:17	56:10 67:2	<b>funniness</b>
116:12 162:21	48:1,5,22 49:6	167:3,3 173:12	<b>formality</b> 3:9,9	172:19
<b>fall</b> 15:6 28:10	49:12,14 51:13	180:16	<b>formally</b> 48:15	<b>further</b> 3:19
31:8 99:15	51:16 52:3	<b>fit</b> 23:5 135:12	60:23	180:5 181:14
<b>family</b> 23:21	147:4 148:22	<b>five</b> 17:6 30:11	<b>forms</b> 4:10 44:3	
134:13	154:10,12	30:13,17,17	46:7	<b>G</b>
<b>far</b> 36:16 43:5	<b>files</b> 48:3 154:5	53:6,7 82:4,6	<b>forth</b> 47:16 72:9	<b>Gale</b> 2:14
77:20 80:4	<b>fill</b> 72:10 151:2	101:19 172:22	<b>forty</b> 167:8	<b>gallon</b> 152:5
157:21	165:4 166:6	<b>fixture</b> 73:3	<b>forward</b> 10:13	<b>garbled</b> 5:22
<b>fashion</b> 72:6	<b>fills</b> 74:19,20	74:12,14,15,17	<b>found</b> 34:8	<b>Garrison</b> 20:1,3
130:11	<b>final</b> 122:11	74:20 75:10	94:17 117:1	160:14,20
<b>fault</b> 59:23	<b>find</b> 40:4 77:11	78:16 81:23	163:17	161:9 164:12
<b>Federal</b> 3:17	85:20 111:11	82:2 86:23	<b>four</b> 29:15 30:1	165:8 166:8,20
<b>feel</b> 144:9	154:11,13,15	87:5 114:5,13	30:2,3,7 93:3,4	168:7
<b>feeling</b> 89:21	154:19	116:12 118:4	101:19 167:8	<b>gather</b> 106:23
95:7,9	<b>finding</b> 66:7	119:7 122:7	<b>four-year</b> 32:8	<b>Gay</b> 9:23
<b>felt</b> 73:10 92:16	111:12	128:22 148:12	<b>frame</b> 89:9	<b>general</b> 58:19
94:2,10 95:16	<b>fine</b> 82:20	150:17 175:4	60:8,19 64:7	64:7
95:19 112:6	<b>fingers</b> 154:22	176:16 178:6	89:21 91:1	92:4,8 110:1
115:23 177:1	<b>finish</b> 8:10,13	<b>fixtures</b> 72:4	95:7,15 107:21	159:17
<b>female</b> 91:8 95:8	93:9 105:19	78:14 81:22	111:14 159:16	<b>generally</b>
95:9 137:3,5	175:6	82:3,4,7 85:18	179:15,17	94:17
137:21 140:14	<b>finished</b> 107:21	87:3 101:6,14	<b>Friday</b> 123:2,4	92:4,8 110:1
145:23 146:6	174:3	116:3 128:21	149:9 173:3	159:17
146:15	<b>finishing</b> 31:21	<b>flip</b> 42:5	<b>friends</b> 142:14	<b>generate</b> 43:14
<b>females</b> 138:2	<b>fire</b> 71:5 73:9	<b>floor</b> 83:10	<b>front</b> 16:7 116:7	<b>generating</b>
<b>field</b> 73:12 162:1	<b>-fired</b> 124:14	<b>flux</b> 14:2	170:21 179:14	113:7
<b>fifteen</b> 27:17	125:3 139:2	<b>fob</b> 179:11,13	<b>Frost</b> 162:20	<b>getting</b> 36:7
28:20 78:6	<b>fires</b> 73:6	<b>focused</b> 63:18	163:5	52:18 58:15
92:4 128:15,20	<b>first</b> 5:2 20:7,17	<b>follow</b> 51:3	<b>frustrated</b>	66:6 73:2 85:6
128:20 146:4	27:9,11 33:19	5:4	178:20	85:6,11,13
153:17	35:19 37:13	<b>foregoing</b> 181:9	73:8	96:13 107:20
<b>fifteen-minute</b>	38:2 41:17	<b>forget</b> 10:1	<b>full</b> 5:8 69:23	112:6 164:19
92:2 93:14,20	45:12 56:10	34:10 54:21	123:3 164:10	<b>gist</b> 95:22,22
<b>fight</b> 58:21	61:9 63:16	91:20	<b>fully</b> 58:7	<b>give</b> 36:14 43:1
<b>figure</b> 14:4	66:16 77:3,13	<b>forgot</b> 30:13	116:21 163:13	64:23 78:15
106:19 120:9,9	82:10 85:1	169:7	168:4	87:15 89:5
120:15 150:15	88:14,20 90:2	<b>forgotten</b> 141:3	<b>full-time</b> 33:16	93:19 96:21
<b>figured</b> 117:7	97:12 107:10	141:9	38:7 165:1,15	105:18,20
121:4	110:13 113:2	<b>form</b> 3:12 42:21	165:16,17,17	111:23 112:8
<b>file</b> 17:21 19:7	115:10,21	49:8 106:12	165:21 169:5	159:19
19:13,16 20:9	123:10 126:7	<b>formal</b> 42:13	169:15,17,20	<b>given</b> 15:21
40:18,23 41:7	132:20 136:22	43:2,8,13 44:1	<b>functions</b> 69:7	17:23 18:6,7

367 VALLEY AVENUE  
 (205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

## FREEDOM COURT REPORTING

Page 190

42:4 71:19	46:21 48:9	83:20 89:5,21	<b>hand</b> 70:13	92:22 93:6,11
108:23 109:4	51:7 57:5,6	90:8 92:15	137:15	109:22
110:5,9	65:5 74:7	94:3 98:14	<b>handbook</b>	<b>Hattiesburg</b>
<b>gives</b> 107:21	76:12,14 78:13	99:9 104:3	155:19	15:13 16:5
<b>go</b> 8:9,19,21	78:14,15 86:17	161:20,21,22	<b>handle</b> 48:12	<b>head</b> 57:22 76:5
29:15 30:6	96:7 102:2	162:9 163:10	102:4 106:10	76:9,12 154:5
33:5 35:5 37:5	106:21 108:9	<b>grow</b> 133:4	121:6	<b>headquarters</b>
49:18 50:10	113:8,9 117:17	<b>growing</b> 83:1	<b>handled</b> 48:9	24:7,19 25:23
56:16 57:5	117:18 118:8	<b>growth</b> 74:1	49:15	<b>hear</b> 171:19
58:1 59:2	118:23 119:2	133:8	<b>handout</b> 159:2	<b>heard</b> 22:6,9
61:22,23 64:20	121:2 124:6,9	<b>guess</b> 8:16 11:2	159:21	143:19 145:5
66:23 67:13	128:21 136:13	21:8 25:23	<b>hands-on</b> 61:17	<b>heat</b> 74:22
68:18 69:2	141:19 152:5	30:13 47:17	134:23	118:12 152:5
75:5 81:19	155:11 166:3	55:18 75:20	<b>handwriting</b>	<b>heating</b> 72:23
83:9 84:14,16	175:7 176:22	77:7 81:19	147:17	150:22
85:5 86:8	177:1,13 178:7	88:13 117:18	<b>handwritten</b>	<b>held</b> 41:18
87:16,16,17,18	178:8,9 179:5	130:15 131:10	51:12	<b>help</b> 34:8 50:9
89:2 91:6	<b>good</b> 24:11,18	135:6 142:22	<b>hand-held</b> 85:8	52:15 56:22
93:10 95:5	35:13 62:18	147:22 150:3	129:1	57:11 59:3
99:1 102:22	71:14 80:8	161:7	<b>happen</b> 20:9	65:13 77:12
103:18 104:17	81:5,16 82:5,9	<b>guesses</b> 23:2	114:20 119:5	78:7,10,11
105:10,11,12	84:12 87:13	<b>guessing</b> 27:5	124:9	83:13 104:15
110:12 112:1,2	127:19 142:10	131:11	<b>happened</b> 64:4	104:18 105:3,6
112:9,20 114:5	175:22	<b>guidance</b> 111:14	67:23 88:16	109:17 110:19
116:5 117:21	<b>gosh</b> 40:6	<b>guy</b> 16:7 37:2,3	89:8,10,11	110:20 111:2,3
119:10 120:3	<b>gotten</b> 94:13	64:13 66:5	97:12,17	111:8 116:14
121:15 122:15	162:9	86:5 112:8	113:21 124:8	116:15,15
127:21 129:18	<b>go-to</b> 133:5	133:5,8,9	124:10	128:5 129:23
129:19 132:16	<b>grade</b> 87:23	135:1 140:23	<b>happy</b> 77:12	162:10,19
138:10 142:21	88:2	162:13	134:16,17	164:20 165:11
153:8 154:11	<b>graduate</b> 159:6	<b>guys</b> 29:5 37:19	141:21	177:23
156:6 158:5	162:4	69:18 78:9	<b>harass</b> 141:6	<b>helped</b> 164:22
163:15 164:3	<b>graduated</b>	135:3 162:14	<b>harassed</b> 144:9	<b>helpful</b> 152:11
167:21 173:3	162:22 166:14	<b>guy's</b> 65:22	<b>harassing</b> 96:3	<b>helping</b> 52:18
179:12	<b>graphic</b> 127:14	<hr/>	147:5	<b>hereto</b> 3:20
<b>goals</b> 43:7 52:18	<b>grasp</b> 150:9	<b>H</b>	<b>harassment</b>	<b>hesitation</b>
52:19 57:21	<b>grew</b> 8:7	H 95:16 141:13	95:12,18 96:12	177:11
<b>goes</b> 31:18 36:16	<b>group</b> 25:16	141:15,20	96:16 103:13	<b>Hey</b> 83:12
40:19 84:22	30:19 32:14,18	142:9	137:3 138:7	<b>he'll</b> 86:13
100:5 121:1	34:12 35:14	<b>half</b> 12:21 13:1	141:2 145:8	<b>Hickman</b> 88:15
145:6 157:21	36:18,20 48:11	<b>half-hour</b> 89:1	146:1,9,17	90:4
<b>going</b> 5:16 14:5	60:21 62:4,12	93:19	<b>hard</b> 65:23	<b>Hickman's</b> 90:6
24:8 35:10	64:9,10,21	<b>hallway</b> 174:5	134:11 171:16	<b>hierarchy</b> 28:10
37:20 40:1	68:10 69:5	<b>hammer</b> 107:1	<b>hard-and-fast</b>	31:9

367 VALLEY AVENUE  
 (205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

## FREEDOM COURT REPORTING

Page 191

high 8:10,10,14 87:16,17	house 71:5,5 75:18	9:13 61:13 63:6 173:9	157:15 indicating 125:23 135:10	instruction 121:6 158:20 159:13
higher 100:4,10 100:15,17,22 101:4	household 15:11 75:23	imperative 74:11	indications 49:5 indicator 151:5	intention 116:9 Interaction 58:2
highly 91:23	how-do-you-d... 112:7	implement 87:1 implied 93:13	indirectly 39:15 individual 19:22 129:19	interest 134:15 172:13
high-pressure 113:11,13	Hudnall 1:16 3:5 5:1,10,13 17:11 21:7	important 80:7 80:17 81:5,10 81:15 83:14 87:12	individuals 104:23	interested 49:21 181:16
high-temperat... 113:10,14	31:9 55:20 66:23 100:1 112:21 114:15	improper 94:4 97:9	industry 127:13 159:15	interface 127:14 129:6 130:1
hire 38:11 160:22 161:4	135:17 140:12 169:21 173:2 180:15	improve 45:2 57:19 85:16	informal 44:8 44:12 56:14 132:8	Interim 4:16 International 98:20
hired 19:17,19 19:22 20:11,12 27:6 33:9,11 33:16,17 34:9 34:11,13,23 36:4 38:5,7 41:17 55:5,7,9 55:10 82:23 159:4 160:16 161:9 162:23 163:1,6 165:23 166:3 168:11 168:22 169:1	huge 69:14 hundred 167:17 hung 120:14 Hungary 55:18 hurdles 78:11 hurt 154:20 hurts 119:4 H-u-d-n-a-l-l 5:12	improvement 82:21 84:17	information 40:19 57:12 110:5 127:22 128:22 148:11 148:13 150:13	Internet 90:13 90:16,22 92:15 94:5
hires 34:5	I	Improvement... 61:9	152:15,23 153:3,7,9 154:3,9,10,13 154:14,21 170:19	Interpersonal 81:8
hiring 35:11	ice 135:2,5 idea 39:10 106:10 107:21 115:15 129:13 132:1 175:22	impulse 121:23 inappropriate 98:3 170:8	infrared 85:8 Initiative 85:16 Initiative/Co... 81:13	interrogatories 20:18 88:5
hit 16:8	identification 17:10 20:14 41:3,10,22 44:19 46:5,15 47:14 107:3 147:8 155:14 156:22	incident 58:10 60:2,9 61:14 94:1 97:9	inside 75:1 install 72:15 74:17 113:17 113:20 128:18	interrupt 116:18 interview 18:10 50:6 125:21
home 11:21	identified 162:20	including 100:16	81:13 installed 128:17 129:15	inventory 98:13 investors 23:23
honestly 21:17 124:4 132:9 141:3 161:1 169:10	identify 42:1 86:14 113:19 III 2:4	inclusion 131:22 incorrect 92:17 independent 65:14	instance 58:20 59:17 90:17 147:4	involved 17:2 24:3,5 60:9 142:12
Hong 26:23	immediately	INDEX 4:1 indicate 51:14 57:10 81:20 87:11 103:12 144:12	instances 61:22 89:20 113:4 115:16	involvement 72:17
Hoover 98:22		indicated 66:11 80:16,21 120:4	instructed 159:10	involves 88:14 97:21,23
hoping 128:17		indicates 67:5 67:11 82:13		iron 72:7,9,11 72:14
hospital 119:19 119:22				irons 70:12 72:15
hot 73:2 85:6,13 102:4				irrelevant 158:17
hour 93:14				issue 64:13,21 85:1 96:18
hours 91:9 94:12 167:9 170:21 178:22				106:18,22 115:22
				issued 79:15

## FREEDOM COURT REPORTING

Page 192

91:2	177:2	22:22 23:1,4	156:7,8,16,17	<b>Larry</b> 162:20
<b>issues</b> 48:12	<b>jobs</b> 28:19	23:14,20,22	159:8 161:1,3	163:5
49:11,14 50:13	<b>Job/Knowled...</b>	24:3,22 25:4	161:4,7,8,12	<b>late</b> 97:6 115:19
60:17 61:10	80:5	26:8,19 33:1	166:13 170:14	<b>Laura</b> 7:19
66:9,17 106:11	<b>John</b> 2:4 5:13	38:14,16,16,17	171:16 173:12	<b>law</b> 1:20
119:13 121:16	<b>joining</b> 63:23	38:20,22 39:1	173:21 175:2	<b>lawyer</b> 140:4
121:18	<b>jumbling</b> 143:13	39:6,8,11,15	177:11 179:17	<b>lead</b> 34:11,12
<b>item</b> 61:9 131:4	<b>June</b> 79:6 149:9	39:17,20,21	36:18,18 68:9	
<b>itemization</b>	151:9 169:16	40:5,7,21	99:8 162:8	
147:20	169:18	46:13,17 47:1	<b>leader</b> 36:20	
<b>items</b> 88:14	<hr/>	47:3,6,22 48:1	74:9	
132:15	<b>K</b>	48:2,3,6,18	<b>leads</b> 150:6	
<hr/>	<b>keep</b> 43:6 64:3	50:7,8 52:7	<b>leaning</b> 112:10	
<b>J</b>	165:18	55:6,17 59:1,5	112:12	
<b>Jackie</b> 1:18 3:6	<b>keeping</b> 69:22	60:18,22 63:7	<b>learn</b> 133:2	
180:11 181:19	83:23 84:20	64:11,12 67:22	<b>learning</b> 91:7	
<b>James</b> 53:15	97:20,22	77:13 85:12	<b>leave</b> 54:6,9 92:1	
54:2	<b>Keeps</b> 31:3	88:13,16 89:8	106:14 175:9	
<b>Jeff</b> 160:14,15	<b>kept</b> 40:17 48:4	90:17,19 92:21	<b>leaving</b> 37:21	
160:20 161:8	83:8 169:5	99:13 100:12	93:15 123:8	
161:17 162:12	<b>key</b> 86:1 179:13	101:7 109:9	175:5	
162:20 163:2	<b>kill</b> 87:19	111:10,12,16	<b>Lee</b> 7:7,11,19	
164:15,22	<b>kin</b> 181:14	111:18,19	8:1 168:14	
165:8,11	<b>kind</b> 9:2 11:20	115:18,19	<b>left</b> 14:3,6 30:15	
<b>Jeffrey</b> 20:8	15:14 31:2	118:1,5 119:20	39:6,9 40:10	
<b>jeopardy</b> 66:18	36:15 44:11	122:4 124:4,4	40:14 54:4,11	
<b>job</b> 12:13 28:21	48:8 51:11,13	124:9 125:5	121:15 122:15	
28:22,23 35:1	58:23 59:3	126:3,21,23	123:11 141:17	
35:16 38:18	74:7 96:13	127:12 128:21	156:7,8 158:8	
39:1,3 41:16	98:6 105:7	130:10,12	160:18 163:11	
65:1,6 66:18	110:6 111:8	133:15 134:2	163:17 165:13	
67:19 71:19	112:8,20 116:5	136:8,15	167:16 173:3,8	
73:9,10 77:17	130:14 135:1	137:16,18,20	173:9,11,13	
78:13 82:6,10	136:6 140:5	138:19,22	<b>length</b> 132:2,12	
84:8 90:6	146:9 170:12	139:5,7,9,12	153:14	
92:23 93:2	176:5	139:18,21,22	<b>letting</b> 156:7	
101:4 105:10	<b>kitchen</b> 12:1	141:7,7 142:5	<b>let's</b> 8:9 11:18	
118:1 122:15	<b>knew</b> 62:6 92:10	142:18 143:5	66:23 91:6	
128:11 131:20	110:23 115:17	145:21 146:5	105:14 136:19	
132:5 150:10	<b>know</b> 7:20 12:1	147:11,13,15	138:10 148:2	
151:10 160:7	15:2 16:19	147:15,17	173:10	
160:12 164:8	18:15,16,22	148:2,21 149:3	<b>large</b> 1:20 3:8	
165:1,7,11,15	21:9,10,11,21	149:3,4 151:6	83:5 180:13	
165:16 176:22	21:23 22:3,14	152:12 155:5	181:22	
				58:6 82:11

## FREEDOM COURT REPORTING

Page 193

100:4,10,15,18	107:20 131:23	152:5 153:19	176:1,8,14	60:20,20
100:22 101:4	<b>lines</b> 51:4	154:12 168:6	178:11	<b>managers</b> 29:6,7
<b>levels</b> 27:18,23	<b>list</b> 4:11 46:20	<b>look</b> 17:19 20:19	<b>machines</b> 62:16	29:11 54:12,14
28:15,16 35:13	57:18 88:9	55:20 85:20	62:20,22	64:8
<b>licensed</b> 32:5,7	<b>listen</b> 58:6	88:4,7 108:15	152:13	<b>manner</b> 11:17
<b>life</b> 56:22 61:11	<b>listening</b> 174:8	116:10 119:7	<b>magnetic</b> 179:11	65:8 71:3
64:17 70:7,9	<b>literally</b> 71:3	129:20 130:15	<b>magnetically</b>	73:18 104:16
70:16 71:1,10	118:13	135:7 136:13	179:10	181:16
71:16,17,17,20	<b>little</b> 12:12 14:1	142:2 148:2	<b>maiden</b> 7:18	<b>manual</b> 157:2
74:6 76:5,10	59:4 79:13	<b>looked</b> 36:17,19	<b>mailing</b> 8:18	<b>manufacture</b>
76:12,15 77:9	85:8 89:22	40:22 77:14,14	<b>main</b> 72:3 81:21	12:3,5
80:11,13 86:4	96:11,15,19	<b>looking</b> 86:13,20	86:3 114:1,12	<b>manufacturer</b>
87:2 97:18	103:5 106:5	131:3	129:16	70:15
103:21 108:12	123:8 128:3	<b>looks</b> 41:6 44:21	<b>maintaining</b>	<b>manufactures</b>
127:23 131:10	129:17 133:2	44:22 85:4	98:13	12:6 151:12
131:11,15	159:3 164:19	87:7	<b>maintenance</b>	<b>mark</b> 155:12
133:8 134:15	164:19 165:11	<b>loose</b> 119:8	71:22 87:2	158:16
149:14 173:23	168:6 175:6	<b>Lorraine</b> 7:17	101:6,10,11	<b>marked</b> 17:9,12
174:5,6	179:11	<b>lot</b> 35:6 100:11	177:20	20:13,15 41:2
<b>lifetime</b> 70:20	<b>live</b> 6:21 9:12,18	108:12 113:2	<b>make-up</b> 54:13	41:9,21,23
<b>light</b> 151:4	9:20 10:2,6,8	132:10 134:22	54:16,19	44:18 46:4,6
<b>LIGHTFOOT</b>	40:3	172:17	<b>making</b> 11:15	46:14 47:13
2:13 6:11	<b>lived</b> 9:10	<b>low</b> 87:17,18,21	30:22 43:6	107:2 125:19
16:19 42:20	<b>lives</b> 7:5,12 31:7	87:23 88:2	61:17,20 68:12	147:7,9 155:13
49:7,16 50:8	38:16 40:7	<b>lowest</b> 28:12,13	68:15 70:20	156:21
50:12 51:2,18	139:7	87:10	71:12 84:6	<b>market</b> 74:9
56:12,16 95:4	<b>local</b> 34:8	<b>lunch</b> 93:19	99:2 118:14	<b>marketing</b> 25:16
103:18 117:11	<b>location</b> 35:10	114:14	122:5 136:9	<b>married</b> 6:19,20
117:14 135:15	<b>locations</b> 10:14	<b>lunchtime</b> 92:6	145:8 165:20	10:17 138:18
137:7 138:1,9	<b>locked</b> 179:10	<b>Lynchburg</b> 8:17	<b>male</b> 95:8	<b>Master's</b> 105:1
143:8,11,23	<b>Logic</b> 129:3	<b>L.L.C</b> 21:12	<b>man</b> 143:6,18	105:4 159:6,10
144:15 146:2	159:12,13		145:12,18	<b>materials</b> 68:21
146:12,21	<b>long</b> 9:10,18	<b>M</b>	98:16 99:5,7	98:16 99:5,7
147:13 149:17	10:2,8,17	<b>machine</b> 31:17	99:17	99:17
149:22 151:15	12:17,22 13:20	31:19 32:3	<b>matter</b> 60:13	<b>matter</b> 60:13
155:9 161:13	15:19 18:19	62:1,9,15 63:1	92:13 180:18	92:13 180:18
163:14 164:3,7	62:3 75:21	63:2 75:10	<b>matters</b> 90:12	<b>matters</b> 90:12
165:9 167:1,18	150:19,21,23	76:7,8 108:18	<b>Maynard</b> 2:14	<b>Maynard</b> 2:14
169:14 174:20	151:3 152:16	108:18 111:4,6	<b>McGhee</b> 104:23	<b>McGhee</b> 104:23
178:14 180:2	153:1,13	113:1 116:15	110:19 112:15	110:19 112:15
<b>limited</b> 26:13	158:18 159:8	116:20 117:9	159:3 162:8	159:3 162:8
51:9	167:16 168:3	118:9 122:1	<b>McLure</b> 6:4,22	<b>McLure</b> 6:4,22
<b>line</b> 43:7 65:9	<b>longer</b> 13:18	151:13,17	9:10	9:10
86:21,21	104:9 114:9,10	164:9 175:18	<b>managerial</b>	mean 24:9 27:20

367 VALLEY AVENUE  
 (205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

## FREEDOM COURT REPORTING

Page 194

28:20 51:20	<b>midst</b> 86:22	136:4	14:10 20:1,7	<b>needing</b> 175:13
63:21 67:9	<b>mid-May</b> 109:11	<b>monitor</b> 122:3	21:11 22:8,18	<b>needs</b> 63:4 82:22
74:13 76:9	<b>mid-2003</b> 55:9	<b>MONTGOM...</b>	98:17 112:14	83:20 85:16
83:9 103:6	<b>mid-2004</b> 55:8	180:10	138:17 140:17	113:9
104:9 122:18	<b>mightn't</b> 155:2	<b>month</b> 157:17	142:23 168:17	<b>Nehans</b> 7:17,19
131:7 134:14	<b>million</b> 128:7	167:8	169:11	<b>neighborhood</b>
134:19,23	<b>mind</b> 30:10 42:5	<b>months</b> 9:19	<b>named</b> 24:2	114:23
168:10	96:13 114:12	10:5 13:21	55:14 138:11	<b>neither</b> 113:13
<b>meaning</b> 51:10	131:13,14	14:14 56:6	<b>names</b> 40:5	181:14
86:2	<b>mine</b> 95:23	80:10 89:11	<b>natural</b> 121:22	<b>networked</b>
<b>means</b> 5:19	164:11 166:6	99:22 121:3	<b>naturally</b> 75:18	129:17
133:15	<b>minimum</b> 81:17	126:8 131:6	<b>nature</b> 92:23	<b>never</b> 22:20 74:1
<b>mean-spirited</b>	<b>mini-computer</b>	167:4 168:5	103:13	86:13 87:16,16
172:20	129:4	<b>Montreal</b> 26:9	<b>near</b> 9:22 18:11	87:17,18
<b>Measurements</b>	<b>minute</b> 38:17	26:11,16,20	58:21	103:11 115:14
98:19	<b>minutes</b> 92:4	<b>morale</b> 87:19	<b>neat</b> 83:8,23	138:5 145:4
<b>meat</b> 118:17	146:4 153:18	88:1,3	<b>necessarily</b> 73:1	176:15 177:1
<b>mechanical</b>	172:22	<b>morning</b> 68:18	83:9 86:11	179:22,23
104:21 105:2,3	<b>misconduct</b> 49:5	89:3,6 93:21	99:11 110:20	<b>new</b> 11:1 20:12
110:17 161:21	49:22 51:14	117:21 124:15	153:5	56:20,22 73:16
162:7	52:10	172:15 173:16	<b>necessary</b> 70:2,4	101:21 102:5
<b>meet</b> 57:21	<b>missed</b> 113:3	178:7	78:20 177:4,10	113:19 128:4
123:10 124:13	<b>Mississippi</b> 10:7	<b>morning's</b> 68:16	<b>need</b> 3:13 6:7	134:4 136:2
152:20	10:9,13 15:12	<b>mother-in-law</b>	16:20 30:23	<b>next-to-the-last</b>
<b>meeting</b> 81:10	17:7,8	7:12,15 11:6	37:23 72:11	158:7
81:14 87:11	<b>mistake</b> 98:10	<b>motivated</b>	82:21 84:17	<b>nigger</b> 170:3,20
124:18 135:10	<b>mixers</b> 70:13	172:17	99:13 101:5,7	171:11
<b>Memo</b> 4:16,18	<b>model</b> 150:18	<b>move</b> 37:13 70:7	101:8 113:15	<b>night</b> 16:6 68:13
<b>mentioned</b>	152:7,17,21	73:19 77:9	116:1 123:16	69:20 70:1,3
101:1 107:4	153:1	81:2 114:16	128:19 149:13	92:18 94:6,7
159:4 171:15	<b>models</b> 152:3	136:19	149:22 152:19	96:23
<b>mess</b> 83:13	<b>modes</b> 133:1	<b>moved</b> 11:3 16:5	176:19,20	<b>nine</b> 10:5
<b>message</b> 39:18	<b>modifications</b>	67:19 68:7	177:23 179:3	<b>nobody's</b> 87:18
40:1 149:8	156:19	71:20,21 77:3	<b>needed</b> 6:12	<b>nods</b> 57:22
<b>messages</b> 4:13	<b>moment</b> 67:14	80:11 97:17	35:6,8 36:2,8	<b>nomenclature</b>
47:16	102:23 122:14	103:21 133:17	45:1 57:11	160:1
<b>met</b> 66:16 80:7	138:5	<b>moving</b> 10:16	63:22 64:21	<b>non-operational</b>
81:4,17	<b>Monday</b> 117:21	173:14 174:15	65:1,2 77:12	163:18
<b>method</b> 43:23	122:20,22	174:16	82:14 86:5	<b>non-superviso...</b>
74:16	123:20 177:22	<b>M-c-L-u-r-e</b> 6:4	87:21 90:11	29:19,22 30:3
<b>Mexico</b> 11:1	178:1,6,17,19	<b>N</b>	100:3,6,9	31:12,23 32:4
<b>middle</b> 1:2 93:5	<b>money</b> 70:22	<b>name</b> 5:7,8,11	110:2,10 111:1	<b>non-threatening</b>
93:7 180:21	84:7 102:17	7:14,18 10:1	117:4 156:8	179:9
<b>midpoint</b> 92:6,7	110:6 114:3,8		162:10	<b>non-work</b> 90:11

367 VALLEY AVENUE  
 (205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

## FREEDOM COURT REPORTING

Page 195

<b>normal</b> 117:22	151:15 155:9	124:22 137:4,4	97:12 99:18	116:2 119:1
<b>normally</b> 38:19	163:14 164:3,7	156:4 173:21	101:18 102:8	122:6 132:3
39:1 75:22	165:9 167:18	174:5	102:13 104:17	163:20 175:3
<b>North</b> 2:15	174:20	<b>offices</b> 1:20	105:16 106:2	175:19
<b>notation</b> 51:13	<b>objections</b> 3:11	26:21	107:10 108:1,4	<b>operates</b> 75:11
<b>note</b> 51:12 64:18	3:12	<b>Offir</b> 14:12,13	108:23 109:12	<b>operating</b> 21:12
82:21 100:14	<b>obnoxious</b> 59:6	14:20 15:1	21:22,23 22:4	21:22,23 22:4
<b>noted</b> 141:16	<b>observation</b>	31:6	22:20 62:2	22:20 62:2
162:13	58:11 65:17	<b>Off-the-Record</b>	123:3,19	116:13 128:15
<b>notes</b> 18:13	83:3	10:18 148:1	129:21 130:3	129:11,12
125:21 126:3	<b>observations</b>	<b>Oh</b> 21:3 26:15	131:4,17 138:4	<b>operation</b> 68:12
<b>notice</b> 4:3 17:13	81:20	31:8 40:6	139:15 143:19	74:18 101:13
48:20 64:8,8	<b>observe</b> 59:9,12	89:13 108:4	147:1,17,23	118:20 164:10
<b>November</b>	<b>obvious</b> 82:11	122:21 144:21	150:1 153:6,23	<b>operational</b>
115:19 116:19	83:19 156:13	145:16	155:20 156:10	116:21 117:3,5
173:4	<b>obviously</b> 59:1	<b>oil</b> 72:18,23	156:23 157:3	122:8,9,12,13
<b>nozzle</b> 108:7,10	114:4	<b>okay</b> 6:1,2,14,19	157:22 158:1,4	123:7 163:13
<b>number</b> 6:17	<b>occasion</b> 102:14	6:21 7:7 8:21	160:14 161:16	163:13,16,23
9:16 18:9,17	111:19,20	10:2,6,8 11:4	163:6 171:19	164:2 167:15
19:2 39:22	<b>occasionally</b>	11:19 12:8,17	172:21 173:5	168:4
72:21 84:16	179:18	14:10,13 16:9	173:16,18	<b>opinion</b> 56:19
88:7 90:2,9	<b>occasions</b> 88:9	16:16,23 17:1	177:6	63:10 81:6
91:6 95:1	112:5	18:2,21 21:1	<b>old</b> 64:19,20	87:20 141:5
97:20,21,22	<b>occur</b> 97:10	22:6,14,22	<b>old-style</b> 118:16	175:18
98:1,12 100:1	<b>occurred</b> 124:18	24:1,11,19	<b>omitted</b> 19:9	<b>opportunity</b>
101:15 102:13	<b>occurs</b> 51:17	25:7,19 26:6	<b>once</b> 35:12 61:3	38:4 116:5
125:20 126:20	<b>October</b> 1:22	26:12,22 27:1	74:19 75:4	<b>opposed</b> 72:6
127:7,9 131:4	181:8	27:11 28:16,19	89:14 98:7	112:8
132:14 133:10	<b>offend</b> 170:3	29:12 30:12,20	150:21 162:22	<b>option</b> 120:22
133:13 136:19	<b>offended</b> 144:11	31:8 32:4 33:8	164:15 178:18	<b>order</b> 35:7 64:22
137:1 158:8	144:12 145:17	37:18 42:10	<b>ones</b> 82:10	75:3 95:20
<b>nuts</b> 31:20	<b>offends</b> 171:16	45:10 46:16	101:22 160:3	99:12 113:20
<hr/>				
<b>O</b>				
<b>oath</b> 5:18	<b>offense</b> 16:17	52:5 54:22	<b>one-man</b> 167:8	120:12 131:23
<b>object</b> 42:20	<b>offensive</b> 94:17	55:3,11 56:17	<b>one-of</b> 132:10	150:16,16
49:7,8	94:18 170:1,13	56:18 60:9	<b>one-week</b>	165:18 174:19
<b>objected</b> 176:17	171:14,22	63:15 65:5	123:17	176:6,11
<b>objection</b> 49:16	<b>offered</b> 3:15	66:9 67:18	<b>on-call</b> 110:21	<b>ordinary</b> 171:15
56:12 95:4	35:15 38:3	68:3,4,8 69:8	<b>Opelika</b> 6:4 9:15	<b>organization</b>
103:18 117:11	70:6 73:14	76:5,16 78:19	9:17 14:17	33:6,9 110:2
135:15 137:7	<b>offering</b> 133:6	80:4 81:19	<b>open</b> 32:22	134:12
138:1,9 143:23	<b>office</b> 29:21	83:11 84:16	86:16	<b>Original</b> 149:8
146:2,12,21	30:18,20,21	88:6 89:7	<b>opened</b> 33:3	<b>Originally</b> 8:4
	65:23 124:17	92:20 93:23	<b>opening</b> 86:12	11:1
	124:18,20,21	94:9 95:13	<b>operate</b> 69:5	<b>outlines</b> 137:19

367 VALLEY AVENUE  
 (205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

## FREEDOM COURT REPORTING

Page 196

<b>output</b> 122:3	47:9,21 49:12	<b>percent</b> 117:4	135:13 136:16	19:20,23 88:10
<b>outside</b> 137:4	61:19 70:14	164:2 167:15	<b>personally</b> 90:14	90:9 91:8,12
<b>oven</b> 86:6,7	83:22 99:7	167:17	170:2	100:3,6,9
<b>ovens</b> 12:1 70:13	101:18 111:13	<b>percentage</b>	<b>personnel</b> 4:17	102:14 181:2
<b>overall</b> 87:7	111:15 128:12	23:22 166:21	17:21 19:7,16	<b>Plaintiff's</b> 17:9
158:6	130:14 133:7	<b>perfect</b> 87:18	20:9 31:6	17:12 20:13,16
<b>overbearing</b>	136:12 141:1	<b>perform</b> 69:6	40:16,23 41:7	20:17 41:2,4,9
89:22	157:1 160:7,12	100:3,9	41:14 44:16	41:11,21 42:1
<b>overlap</b> 88:20	161:17 164:12	<b>performance</b>	46:11 47:10,21	43:15 44:15,18
89:1	172:20	4:18 32:16	48:1,5,21 49:6	44:20 45:8,14
<b>overloaded</b> 64:1	<b>participating</b>	34:16,21,22	<b>Petal</b> 10:7,8,12	45:21 46:4,6
<b>owned</b> 23:18	174:9	50:13 65:4	15:12	46:14,16 47:13
<b>owner</b> 141:12	<b>particular</b> 62:1	69:4 78:20	<b>phase</b> 75:6	47:15 52:13
<b>owns</b> 21:19	62:2 65:16	80:7,16,21	<b>philosophy</b>	55:21,22 66:23
23:20,21 26:10	81:20 83:2	81:4,9,14 87:7	84:10	79:3 88:4
<b>o'clock</b> 93:6	<b>parties</b> 3:3,20	104:10 157:7,8	<b>phone</b> 31:2	97:13 107:2,5
<b>O-f-f-i-r</b> 14:12	142:12 181:12	157:16	39:22 95:1	126:14 140:13
<b>P</b>				
<b>packages</b> 22:17	<b>parts</b> 101:15	<b>performing</b>	119:12 120:18	147:7,9 148:2
<b>page</b> 17:20	102:3,6 110:4	52:17	142:4,8 144:7	155:12,13
20:22 86:19	111:12 113:5	<b>period</b> 4:15	145:7 178:2,4	156:21,23
109:7 141:9	113:16 114:4	51:22 54:18	178:12	158:2
149:7,10 158:5	136:21	75:15,17 79:6	<b>phonetic</b> 7:17	<b>plant</b> 25:15
158:7	<b>party</b> 3:16	146:14 167:1,9	<b>physical</b> 59:1	27:16,19 28:1
<b>pages</b> 18:19 42:6	<b>Paso</b> 9:1 11:2	167:11 175:10	<b>pick</b> 35:14 57:7	29:1 32:12
42:7 158:18	<b>passing</b> 119:3	<b>periodic</b> 44:12	83:17	<b>plants</b> 24:22
181:9	<b>Patricia</b> 169:8,9	<b>permanent</b> 35:9	<b>picking</b> 87:22	<b>play</b> 164:12
<b>paid</b> 84:8	<b>pay</b> 4:15 38:6	68:10 133:14	100:13	176:21
<b>pain</b> 136:11	48:16,16 136:8	133:16,17	<b>piece</b> 44:21,23	<b>Plaza</b> 2:16
<b>pains</b> 119:20	<b>payroll</b> 147:21	168:23	51:12	<b>PLC</b> 85:2 129:3
<b>pant</b> 131:4,17	<b>peers</b> 58:4,16	<b>permanently</b>	<b>pieces</b> 130:2	129:7 149:15
<b>paper</b> 30:23	<b>pencils</b> 30:23	33:17 34:13	<b>Pierce</b> 53:15	158:19 159:23
51:12	<b>pens</b> 30:23	55:6,10	54:2	<b>PLC's</b> 129:17
<b>paragraph</b> 58:1	<b>people</b> 14:23	<b>person</b> 14:11,16	<b>pinpoint</b> 132:23	159:15,18
126:20 145:22	25:17 27:1,8	19:17 27:20	<b>pint</b> 152:6	<b>please</b> 5:7,11
<b>parameters</b>	27:15 28:21,23	35:9 66:3,7	<b>place</b> 51:7,16	41:5,12 42:2
105:18 128:2	30:5,15 32:13	95:16 105:9	52:1 66:12	79:8 149:16
<b>Pardon</b> 54:15	34:6 36:14,21	134:17 135:22	78:23 157:16	<b>plenty</b> 35:20,20
<b>Parham</b> 1:18 3:6	48:12 53:2,22	141:15 166:12	174:7	35:23 39:4
180:11 181:19	58:17 64:9,12	179:8	<b>placed</b> 36:5	77:16,16 99:10
<b>part</b> 12:8 40:7	68:17 70:5	<b>personal</b> 94:5	48:21 69:11	<b>plus</b> 29:21 69:23
42:8 44:16	104:3,14 119:2	134:15	<b>placing</b> 66:18	<b>pocket</b> 135:3
45:7 46:11	134:4,5 145:23	<b>personality</b>	<b>plaintiff</b> 1:6 2:3	<b>point</b> 39:3 83:15
	133:14,22	133:14,22	17:21 18:4,12	85:10 86:14,15
	<b>people's</b> 65:23	134:1,8 135:8	18:18 19:3,17	87:3 90:3

## FREEDOM COURT REPORTING

Page 197

102:2 106:9 108:10 112:6 120:18,22 122:11 124:5 125:18 131:1 132:22 140:19 146:6 162:10 166:7 172:12 172:12 175:2 175:16 <b>points</b> 114:12 <b>policies</b> 4:17 170:11 <b>policy</b> 4:19 42:14 48:7 51:15,17 52:1 52:3,5,10 59:18 60:5,14 60:18 61:6 91:11,16 94:8 96:6 98:9 155:15,21 156:14 157:1 157:11 <b>portable</b> 70:12 74:10 118:9 <b>position</b> 4:7 12:18,19 13:2 20:12 28:8 34:9 36:11 41:13,18 70:6 73:13,15,16,20 73:22 76:22 77:11 165:18 165:21 166:7 <b>positions</b> 29:18 29:20 32:11,11 <b>positive</b> 131:12 <b>possibility</b> 115:12 <b>possible</b> 17:17 62:14 76:4 131:22 156:18 162:21	<b>possibly</b> 131:12 133:6 158:12 <b>posters</b> 170:14 170:16 <b>potential</b> 88:1 <b>powder</b> 99:6 <b>practice</b> 51:6 52:1 146:18 <b>preferred</b> 131:9 <b>prepare</b> 56:8 <b>prepared</b> 47:1,3 <b>presence</b> 172:6 <b>present</b> 2:9 124:17,22 125:2,5 171:7 <b>president</b> 25:17 <b>press</b> 75:1 131:5 131:18 <b>pressure</b> 118:15 118:16,20,21 <b>pretty</b> 82:5 83:19 104:11 104:13 165:1 165:22 <b>preventive</b> 87:1 <b>previous</b> 82:2 <b>previously</b> 150:8 <b>primary</b> 67:5 <b>privately</b> 23:18 <b>probably</b> 10:4,5 23:2 30:1,1 65:12 73:18 75:14 82:3 96:19 109:11 115:18 117:3,6 123:9 128:14 141:1 156:11 157:5 <b>problem</b> 63:3,4 63:7,23 83:22 88:2,3 89:15 108:1 117:1 123:9 137:2 140:14 141:22	150:9 160:11 179:23,23 <b>problems</b> 85:17 86:15 121:16 <b>procedural</b> 3:10 <b>procedure</b> 3:18 51:6 146:18 <b>process</b> 10:16 45:4 48:14 70:14,23 71:7 75:8,13 113:22 130:23 <b>produce</b> 151:1 <b>produced</b> 17:19 19:5,8 147:10 158:19 <b>product</b> 12:14 12:16 31:21 62:2 63:3,4 70:19,22 71:7 71:9,12,17 75:21 85:1,4 85:19 101:12 107:17 108:13 113:7 151:11 151:20,21,22 162:2 <b>Production</b> 4:5 <b>products</b> 11:16 12:1,3 15:11 15:15 25:20 26:3 62:16,23 70:11 85:18 132:11 133:3,6 151:18 <b>professors</b> 162:3 <b>program</b> 127:16 129:11,13 130:10 149:15 159:7,17,18,20 159:22 160:7,8 <b>Programmable</b> 129:3 159:12 159:13	<b>programs</b> 128:4 129:14 <b>progressing</b> 102:16 <b>prohibited</b> 98:3 <b>prohibition</b> 145:14 <b>project</b> 29:6,7 29:11 31:14 48:11 54:12,13 69:12 102:19 109:5,9,15,21 110:7,16 112:21 114:9 116:17 162:4 163:9 168:9 <b>projects</b> 63:19 63:20 110:22 161:22 162:6,7 162:18 164:21 174:2 175:7 <b>pronunciation</b> 20:5 <b>proper</b> 11:16 99:17 <b>properly</b> 62:3 73:4,5 98:14 101:12 116:3 119:6 128:16 128:17 160:11 <b>properties</b> 10:15 <b>property</b> 31:15 <b>protocol</b> 156:3 <b>provided</b> 3:17 18:1 50:4 85:7 174:18 <b>proximity</b> 103:3 103:7 <b>public</b> 62:21 <b>publicly</b> 23:15 <b>published</b> 156:16 <b>pull</b> 127:21 <b>purchased</b> 160:4	<b>purports</b> 149:4 <b>purpose</b> 3:16 <b>purposes</b> 17:10 20:14 41:3,10 41:22 44:19 46:5,15 47:14 107:3 147:8 155:14 156:22 <b>pursuant</b> 1:17 <b>push</b> 72:8 <b>put</b> 35:22 51:13 58:7 68:22 72:5,18 83:10 96:2 120:11 127:16 128:4 136:18 150:21 150:22 152:19 156:19 167:7 175:2,20,23 176:7,13,15,17 177:18 <b>puts</b> 75:13 <b>putting</b> 62:19 <b>PX-1</b> 4:3 <b>PX-10</b> 4:14 <b>PX-11</b> 4:15 <b>PX-12</b> 4:16 <b>PX-13</b> 4:18 <b>PX-2</b> 4:4 <b>PX-3</b> 4:6 <b>PX-4</b> 4:7 <b>PX-5</b> 4:8 <b>PX-6</b> 4:9 <b>PX-7</b> 4:10 <b>PX-8</b> 4:11 <b>PX-9</b> 4:13 <b>P-e-t-a-1</b> 10:7
<b>Q</b>				

367 VALLEY AVENUE  
(205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

## FREEDOM COURT REPORTING

Page 198

5:21 42:17 51:4 88:8 97:7 100:20 137:10 137:17 140:12 143:13 144:11 144:13 145:2 145:18 150:11 151:8 <b>questions</b> 3:11 5:16 149:18,20 151:11,13,16 <b>quit</b> 85:19 90:11 139:3,4,5 <b>quite</b> 9:19 <b>quote</b> 52:9	<b>ready</b> 136:14 151:6 <b>real</b> 65:10 139:13 <b>realized</b> 164:16 <b>really</b> 21:18,18 23:3 66:1 70:3 70:7 73:22 95:19 134:13 134:18 135:21 136:21 139:12 142:10 145:4 <b>realm</b> 104:12 <b>reason</b> 37:21 69:13 89:23 106:15 136:3 142:22 145:16 <b>reasons</b> 137:17 137:19 179:7 <b>rebuild</b> 121:1 <b>recall</b> 38:9 49:2 78:4 90:13 103:10 125:16 125:20 126:8 127:6 138:21 156:16 172:5 175:17 177:16 <b>received</b> 42:11 <b>receiving</b> 22:17 <b>recess</b> 66:22 114:14 173:1 <b>record</b> 72:20 85:12 <b>records</b> 40:16 48:4 <b>redacted</b> 19:9 <b>Reese</b> 13:7,8,15 13:23 14:8 15:3 47:17 78:9 91:7 104:19,20 109:18 110:15 125:7 148:4,5 148:14 149:10	154:17 <b>Reese's</b> 109:19 <b>refer</b> 132:14 148:9 <b>referencing</b> 18:10 <b>referred</b> 137:13 159:14 <b>referring</b> 127:12 <b>refers</b> 71:17 126:22 140:14 148:10 <b>refill</b> 122:4 <b>reflect</b> 49:22 <b>reflected</b> 44:2 45:7 84:11 102:9 <b>reflecting</b> 18:2,9 <b>reflects</b> 49:14 <b>Refrain</b> 63:19 <b>regard</b> 155:20 <b>Regarding</b> 4:16 4:18 <b>regular</b> 34:23 169:14 178:22 <b>regularly</b> 34:1 <b>reiterate</b> 96:21 <b>reiterates</b> 90:2 <b>relate</b> 128:10 131:20 <b>related</b> 77:8 85:22 88:11 91:10 <b>relationship</b> 23:4 <b>relatively</b> 128:1 <b>relatives</b> 7:7,11 7:20 11:5,9 <b>relayed</b> 63:5 <b>release</b> 75:3 118:15 <b>Reliability</b> 131:6 131:8,9,13,14 132:15 133:8	91:17 94:17,19 180:14 <b>reporter</b> 1:19 3:7 31:16 180:12 181:20 <b>REPORTER'S</b> 180:8 <b>reports</b> 43:17 <b>represent</b> 5:14 <b>representative</b> 141:13 <b>representing</b> 3:3 <b>reprimand</b> 48:21 50:1,15 50:16 51:8,10 <b>reprimanded</b> 48:15,20 88:10 <b>reprimands</b> 49:4 <b>request</b> 149:2 150:1 <b>Requests</b> 4:4 <b>require</b> 179:6 <b>required</b> 32:2,2 39:4 68:13 70:1 98:17 <b>requirements</b> 3:10 57:13 132:17,19 <b>requires</b> 38:19 39:1 <b>research</b> 106:5 <b>reserved</b> 3:14 <b>resistance</b> 134:3 <b>resolution</b> 177:8 <b>resources</b> 34:3 78:10 104:22 <b>respect</b> 3:10 52:17 58:5 136:15 <b>respecting</b> 58:16 58:17 <b>response</b> 18:5 66:10 96:10
--	--	--	---

**FREEDOM COURT REPORTING**

Page 199

149:1	16:12 20:2	126:4	<b>salary</b> 84:15	15:4 28:11
<b>Responses</b> 4:4	25:5 27:22	<b>Robinson</b> 54:23	<b>sale</b> 131:22	35:5,8,9,15,15
20:17	29:13 30:7,9	55:2,3,11	<b>sales</b> 25:16	35:18 36:5,6
<b>responsibilities</b>	31:4 32:10,13	168:18	<b>Sam</b> 88:15 90:3	36:21,23 37:5
56:20 99:8	37:15,17,19	<b>role</b> 36:19 82:22	90:6	37:8,23 38:1
134:4	38:17 45:12	82:23 133:4	<b>sand</b> 35:21 65:9	59:10 68:11
<b>responsibility</b>	46:3 50:5 51:2	164:22	68:23 99:6,16	69:14,23 77:4
72:3,13 78:18	51:20 56:6,15	<b>roles</b> 166:5	<b>Saturday</b> 123:1	77:7,10 88:19
83:7 104:8	61:21 62:11,12	<b>roof</b> 118:18	178:23	89:4 116:18
136:5	69:8,13 71:19	<b>room</b> 29:15 30:6	<b>Saturdays</b>	<b>secondary</b> 67:7
<b>responsible</b>	78:22 81:23	73:7 76:15	179:19,21	<b>Secondhand</b>
31:18 35:17,19	86:10 88:20	83:4 101:11	<b>sauce</b> 118:18	59:11
36:6 53:2 62:5	95:2 98:17	106:23 119:22	<b>save</b> 155:2,4	<b>Secondly</b> 173:13
68:20 70:15	99:16,23	127:23 174:1,6	<b>saw</b> 35:12 126:7	<b>secretarial</b>
71:21 76:6,17	102:18 103:1	174:6	172:16	32:10
<b>rest</b> 100:16	104:2 106:17	<b>Rosenzweig</b>	<b>saying</b> 32:9	<b>section</b> 151:9
<b>restate</b> 143:9	114:12 117:13	23:21	127:6 130:4	<b>Security</b> 6:17
<b>result</b> 43:13	117:17 123:15	<b>roughly</b> 56:6	151:22 164:23	<b>see</b> 37:23 49:21
<b>results</b> 181:16	127:3 133:20	<b>routine</b> 44:11	165:10 176:10	57:23 71:7
<b>resume</b> 4:6	136:16 138:14	84:18 117:22	177:16	85:11,20 88:19
35:12 41:6	143:2 144:22	161:23 172:8	<b>says</b> 57:5 61:10	99:2 106:22
77:14	145:13 151:16	<b>routinely</b> 161:23	79:5 84:17	112:9 116:12
<b>retrieved</b> 148:23	154:18 155:10	<b>routines</b> 171:3	86:22 91:6	116:13 118:3
<b>return</b> 124:16	161:18 163:21	<b>Rules</b> 3:17	100:7 102:1	119:7,8 120:8
<b>review</b> 4:19 67:2	164:23 170:18	<b>ruling</b> 3:14	126:20 137:8	120:15,23
67:11 79:5,9	171:7	<b>run</b> 35:7,8,14	149:8,13	125:22 126:10
79:10 88:8	<b>Rightly</b> 87:14	68:18 69:16	158:19	129:13 135:7
123:16 126:13	<b>ring</b> 178:12	72:6 110:22	<b>scale</b> 158:9,11	150:11 151:3
156:11 157:21	<b>road</b> 6:22 16:7	117:3,5 120:6	158:12	156:12 162:18
176:20	<b>Robertson</b> 13:14	122:23 151:3	<b>schedule</b> 36:16	172:16 176:22
<b>reviewed</b> 56:1	13:16,19 14:3	164:20 178:22	79:12,13 92:21	178:7 179:17
157:4,18	14:7,11 22:17	<b>running</b> 74:12	92:22	<b>seeds</b> 66:21
<b>reviewer</b> 67:6,7	38:12,15 40:2	88:18 120:11	<b>scheduled</b> 91:22	<b>seeing</b> 145:17
<b>reviews</b> 157:7,8	46:21 47:4	129:9 130:21	<b>scheduling</b>	seeks 57:10
157:16	60:3,7 67:6,10	165:19,20	35:17 36:8	<b>seen</b> 17:13 47:7
<b>Rhodes</b> 138:3,12	79:10 83:15	176:4 178:6	<b>school</b> 8:9,10,11	47:19 85:17
138:13,15,17	90:19 115:5,7	<b>runs</b> 93:4	8:14,19,22	126:5 147:14
139:15,18,22	115:11 120:19	<hr/>	32:8 37:20	<b>self-reliant</b>
140:5,10,16	124:3,6,12	<b>S</b>	162:17,22	65:15
<b>rice</b> 68:23 99:6	125:6,9 127:4	<b>safe</b> 71:2,12	<b>schools</b> 9:3,7	<b>sell</b> 11:21
<b>Richards</b> 19:12	130:7 133:23	119:1 163:19	<b>score</b> 87:10,21	<b>semester</b> 162:15
53:16,19,20	134:9 139:19	175:19	<b>scratch</b> 167:23	<b>send</b> 101:21
54:1	<b>Robertson's</b>	<b>safety</b> 179:7	168:2,4	102:5
<b>right</b> 13:5,15	124:19,22	<b>SAITH</b> 180:5	<b>second</b> 14:23	<b>senior</b> 161:22

367 VALLEY AVENUE

(205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

## FREEDOM COURT REPORTING

Page 200

162:1 163:9	96:4 102:23	141:3	35:3 37:4,12	160:6,9,13
<b>sense</b> 69:15	138:3,4	<b>sides</b> 59:22 60:1	38:21,23 39:7	163:3 165:3
93:15 131:1	<b>shelf</b> 31:22	<b>signal</b> 121:21,22	39:14,21,23	166:9,11,18
154:6 155:1,3	<b>shift</b> 35:5,8,10	<b>signature</b> 3:21	40:9,15 41:1,5	168:20,23
155:8 174:1	35:15,16,19	20:21,23	41:8,12,15,17	169:2,4 170:7
<b>sensor</b> 175:14	36:5,7,9,22,23	<b>signed</b> 20:19	42:9,13 43:10	170:10,23
175:19,23	37:6,8,13,23	21:2 56:3	43:12,16 44:6	171:2,6,9,12
176:5,7,11,16	38:2 68:11,18	66:13	44:14,17 45:6	171:23 172:4
177:1,13,18	69:14,20,23	<b>significance</b>	45:9,9,15,19	173:12,17
<b>Sent</b> 149:9	70:1,3,5 77:4,5	150:4	46:2,10,18	174:14 175:11
<b>sentence</b> 84:1	77:7,10 88:19	<b>significantly</b>	47:2,8,18,20	175:21 176:2,9
86:1 101:1	88:21 89:4	80:22	48:6 49:2	176:15,19
157:15	92:18 93:18	<b>signing</b> 181:12	52:11 53:1,13	179:1
<b>sentences</b> 86:2	<b>shifts</b> 35:7 69:16	<b>similar</b> 22:9	53:21 54:5	<b>sit</b> 160:5
<b>September</b>	<b>shipped</b> 31:1	116:17 134:6	55:12,15,23	<b>site</b> 68:11
162:16	<b>ships</b> 31:1	<b>Simon</b> 53:16	56:2,7,9,21	<b>six</b> 9:19 10:4
<b>series</b> 58:10	<b>shock</b> 96:15	54:3 105:1	57:1,4,14,17	13:21 14:14
<b>serious</b> 147:2	<b>shoes</b> 58:8 165:4	110:17,18	58:13 59:15	56:6 101:20
<b>service</b> 101:8,9	<b>shoot</b> 85:10	<b>simple</b> 82:7	61:2 63:17	<b>Sixth</b> 2:15
<b>Services</b> 1:9	<b>short</b> 75:15	106:15	67:4,12,21	<b>sketch</b> 106:9,13
11:12 21:16	<b>shorter</b> 45:13	<b>simply</b> 132:11	68:5 74:9	106:15
23:12,15 181:5	75:17	<b>simulate</b> 75:21	75:12 76:19,21	<b>skill</b> 35:12
<b>set</b> 20:18 68:17	<b>Shorthand</b> 1:18	<b>single</b> 6:19 95:7	76:23 77:2	<b>Skills</b> 81:8
72:18 98:20	3:7 180:11	95:8,9	78:3 79:2 80:3	<b>slowly</b> 102:16
99:3 150:10	181:20	<b>singled</b> 90:14,19	80:9,12,19	<b>small</b> 11:21 85:8
181:12	<b>shortly</b> 79:17,19	<b>sir</b> 5:15,20 6:23	81:1,7,12,17	134:12 175:7
<b>setting</b> 83:18	141:11	7:4,6,9,23 8:2	87:6 89:13	<b>Smith</b> 1:5 2:9
<b>settled</b> 22:19	<b>show</b> 17:11	8:8,12,20 9:6,9	90:5 91:3,5	4:9 5:14 23:10
<b>setups</b> 56:23	20:15 41:4,11	10:21 11:1,7	94:15 103:2	24:17 27:6,13
<b>seven</b> 10:10	41:23 46:16	11:10,13 13:3	104:21 108:22	33:9 34:9 49:6
15:20 27:12	57:17 86:9	13:9,12,17	109:8,20	49:22 56:11
88:13	106:3 107:4	14:22 15:5,8	112:17,19	67:3 80:1
<b>sexual</b> 95:11,18	108:5 109:1	15:22 16:1,3	114:18 115:2,9	90:10 96:9
96:12,15	147:12 149:4	16:10,15 17:4	121:11 123:2	103:21 114:16
103:13 138:6	155:11 156:23	17:14,15 18:7	123:12,14,21	115:13 124:3
141:2 145:8	172:11,16,16	18:14 19:1,6	123:23 125:1	124:13 125:10
146:8,17	<b>showing</b> 46:7	19:11,15 20:3	126:6 127:2,6	128:9 134:10
<b>sexually</b> 144:9	60:5	20:11,23 21:3	127:8,11	139:11,16,20
147:5	<b>shown</b> 45:20	21:6,13 22:2	138:16 139:6,8	140:1,6,10
<b>shape</b> 106:12	52:13 57:15	22:13 23:1,19	139:10,21	146:14 147:5
<b>sheet</b> 18:13	<b>shows</b> 149:5	24:6 25:11,13	140:11 142:20	148:5 149:9
<b>Sheffield</b> 19:7	<b>shut</b> 77:5,8	25:21 26:15,17	147:19 148:6,8	150:5 155:22
53:15 54:3,6	<b>shut-down</b> 75:6	33:4,6,10,18	148:15 158:13	157:9,23 160:5
91:15 93:23	<b>side</b> 85:10 105:4	33:20 34:19	158:21,23	161:6 165:13

367 VALLEY AVENUE  
 (205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

## FREEDOM COURT REPORTING

Page 201

167:15 168:22	<b>sound</b> 33:15	78:23 142:16	106:20 119:9	153:15 164:18
170:22 171:7	<b>soup</b> 31:19	<b>sprouting</b> 66:21	129:2,4,5,6,8	<b>steam-generat...</b>
179:15 181:1	<b>South</b> 1:21 2:6	<b>squeeze</b> 108:2	129:19 131:17	118:10
<b>Smith's</b> 4:6	<b>spaces</b> 103:5	<b>standards</b> 12:16	<b>stations</b> 130:21	<b>step</b> 82:8
40:22 124:7	<b>speak</b> 5:3 40:12	80:7,17,23	130:22 131:6,8	<b>steps</b> 106:8
125:10 138:23	58:5 63:21	81:4,10,15,18	131:15,15	<b>stipulated</b> 3:2
147:21 169:23	67:20 179:20	87:12 98:21	<b>status</b> 68:16	3:19
172:6	180:16	99:3	78:23 89:5	<b>stipulation</b> 1:17
<b>Social</b> 6:17	<b>speaking</b> 65:8	<b>Stan-Pro</b> 22:7	129:7	3:1
<b>Society</b> 98:18	<b>speaks</b> 42:21	<b>Stan-Ro</b> 22:11	<b>stay</b> 25:17 71:15	<b>stopped</b> 116:23
<b>Soft</b> 159:20	<b>spec</b> 149:14	22:12,15,18,23	<b>steady</b> 150:20	<b>stopping</b> 93:8
<b>software</b> 127:9	150:12,12	<b>start</b> 8:9 66:6,7	152:2,7,17	<b>stops</b> 86:6
<b>soils</b> 69:1	<b>specific</b> 22:8	70:8 72:4 73:6	153:2,15	<b>store</b> 99:1
<b>sold</b> 62:21	29:2 58:20	73:12 86:13	<b>steam</b> 11:22	<b>street</b> 1:21 2:6
<b>solely</b> 105:9	68:22 74:5	87:22 88:21	70:12 74:7,10	9:16,17,23
<b>solutions</b> 133:7	83:22,22 89:18	99:15 100:13	74:12,13,17,18	10:1
<b>somebody</b> 35:11	89:20 98:21	115:10 117:23	74:23 75:1,3,5	<b>strength</b> 81:21
55:18 61:23	99:4,4 100:5	131:3 132:21	75:11 81:23	<b>Strive</b> 65:14
65:11 72:8	115:16 128:22	132:23 149:7	82:1,5,8 86:23	<b>students</b> 159:11
73:6 74:2	159:20	149:15 150:1	87:5 101:16,23	159:16 162:1
83:12 86:17	<b>specifically</b> 23:7	150:16,22	102:1,15	162:19
92:17 93:1	33:1,12 47:2	156:20 167:20	105:14 106:20	<b>stuff</b> 35:23
96:3 99:2	55:6 68:1	167:22 168:1,3	106:21 107:23	58:23 70:14
119:5 152:15	88:17 98:15	<b>started</b> 33:6	111:4 112:21	99:10
153:8 154:11	103:11 108:11	59:21 69:22	113:7,9 114:13	<b>subpoena</b>
165:19 166:6	149:1 159:22	106:1 114:6	116:2 118:2,10	137:16
<b>somebody's</b>	<b>specification</b>	122:22 135:22	118:11,14,19	<b>subsequent</b>
108:1 154:4,5	107:17 152:18	172:11	119:7,13	166:4
<b>someone's</b>	<b>specifications</b>	<b>starting</b> 31:20	120:13,14,20	<b>sued</b> 15:23 16:2
148:19	72:20 150:2	57:17 85:14	121:17 122:3	16:8,8,14
<b>sons</b> 40:3	<b>specify</b> 24:14	<b>starts</b> 74:23	125:17 151:1,7	<b>suffering</b> 136:12
<b>soon</b> 62:13	<b>speculation</b>	162:17	151:7 163:12	<b>summary</b>
<b>sorry</b> 6:7,9	146:13,22	<b>state</b> 1:19 3:8	164:13,18	127:19
30:10 34:19	<b>speed</b> 123:7	5:7 128:13	165:2 166:22	<b>Sunbeam</b> 15:11
37:17 49:20	<b>Spell</b> 5:11	150:20 152:2,8	167:5 175:4,13	15:15,16,19
55:8 79:21	<b>spend</b> 110:2,3,7	152:17 153:2	177:20	<b>Sunday</b> 123:1
100:19 106:8	154:8	153:16 180:9	<b>steamer</b> 106:3	178:23
122:21 128:13	<b>spent</b> 156:3	180:12 181:21	130:22 131:2	<b>Sundays</b> 179:19
143:16 149:21	165:13 168:7	<b>stated</b> 113:5	148:11 149:14	179:20,21
169:7,18,20	<b>spoken</b> 63:21	150:8	150:18,23	<b>supervised</b>
<b>sort</b> 32:9 34:11	119:17	<b>statement</b> 62:7	151:2 153:17	13:13
48:16 52:2	<b>spot</b> 129:20	<b>STATES</b> 1:1	174:3	<b>supervisor</b> 13:4
74:11 75:10	<b>spring</b> 37:14,16	180:20	<b>steamers</b> 107:18	13:10,22 53:9
90:2	67:16 68:3	<b>station</b> 102:16	150:12 151:23	53:11 59:14

367 VALLEY AVENUE  
 (205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

## FREEDOM COURT REPORTING

Page 202

103:22	system 72:19	talked 10:12	Technician/E...	131:9,13 134:8
<b>supervisors</b> 18:3	74:22 87:2	24:2 40:10		172:15
<b>supervisory</b>	101:6 105:15	63:15 64:11	<b>techs</b> 29:4,5,8,16	<b>terminate</b> 115:3
31:5 36:10	105:18	92:14 95:13	30:2,13,17	124:6
<b>supply</b> 98:13		96:9 98:1	53:14 55:13	<b>terminated</b>
<b>support</b> 110:9	<b>T</b>	101:9 130:16	69:5	18:12 19:23
<b>supposed</b> 60:16	<b>table</b> 107:1	130:17 133:11	<b>telephone</b> 90:12	27:13 39:8
64:15 85:13	<b>take</b> 7:12 9:2	136:23 141:15	90:15,18,22	41:19 46:23
92:5,19 104:6	48:10 57:15	142:3 157:9	92:14 94:5	47:5 54:9
107:11,15	58:5 59:8 67:9	178:6,18	97:10 140:20	102:20 114:17
122:22 128:9	74:16 76:22	<b>talking</b> 24:15	<b>tell</b> 12:12 16:4	123:22 139:2
129:22 147:12	77:18 85:16	28:20 44:7	17:1 20:20	150:5 161:6,10
<b>sure</b> 11:15 30:22	86:7 92:2	62:15,20 64:10	21:10 22:14	168:22
35:20 36:6	93:10,13	64:14 84:6	27:18 42:6	<b>terminating</b>
42:16 43:4,6	113:18 116:4	115:10 137:6	59:16 68:6	115:12
44:10 47:11,12	116:10 120:3	137:12 139:14	74:1 86:17	<b>termination</b>
50:10 51:5	120:23 121:3	142:7 144:15	97:2 106:5	4:12 115:15
58:4,6,22	128:5,23	146:1 172:1,7	108:7,10	137:18,19
61:10,17,20	129:22 132:9	175:12 177:5	112:22 124:13	164:9
62:10 63:22	132:20 133:1	<b>talks</b> 90:9	129:7 143:4,10	<b>terminology</b>
65:2 68:12,15	150:21,23	100:12 127:9	143:21 147:12	176:21
68:20 69:2,4	152:1,3,5	131:4 136:19	158:22 175:9	<b>terms</b> 160:2
70:20 71:2,23	153:1,13	<b>Tallassee</b> 1:21	176:6	<b>Terry</b> 13:14,15
72:22 73:2,2	154:12 157:16	2:7	<b>telling</b> 133:5	14:6,7,11
76:9 83:7	164:16 167:16	<b>tasks</b> 57:3,16	171:17 175:17	38:12,14 40:2
89:10 95:18	168:3 172:22	82:19 84:19	<b>tells</b> 129:5 162:2	67:6 115:5,7
96:18 97:14,16	174:17 175:8	<b>taught</b> 87:15	<b>temp</b> 33:13,19	115:11,14,15
99:9 110:3,5	<b>taken</b> 1:17 3:6	<b>team</b> 61:13 63:5	34:18,19,20	121:5 124:2,6
111:5 113:23	48:9 69:11	133:2	133:17 169:3,4	124:12 125:6,9
114:10 119:15	115:23 142:12	<b>Teamwork</b> 81:2	169:14	127:3 130:6
122:12,17	<b>takes</b> 56:20	<b>tech</b> 28:16 34:11	<b>temperament</b>	131:9 133:23
130:16 134:16	121:21 150:19	34:12,21,21	136:17	134:7,9,13,20
139:13 141:8	151:3 152:16	41:16 55:2	<b>temporaries</b>	139:19 156:17
145:8 163:19	153:14,23	68:9 99:8	69:6	<b>test</b> 29:19,22
165:20	<b>talcum</b> 99:6	103:1 168:19	<b>temporarily</b>	30:3,17 31:10
<b>surprised</b> 96:11	<b>talk</b> 11:18 43:3	169:13	55:7,9 169:1	31:12,23 32:3
<b>surrounding</b>	45:1,3 100:14	<b>technician</b> 28:8	<b>temporary</b>	32:4,16 56:22
7:21	105:14 106:7	28:13 76:14,16	32:13 90:7	62:16,22 70:7
<b>suspended</b>	111:18,19	86:8 153:13,20	<b>temps</b> 32:17	70:9 71:1 72:5
48:15,16	120:10 123:11	154:15	<b>ten</b> 16:9 30:4	76:14,16 81:21
<b>sweep</b> 83:9,18	125:14 144:18	<b>technicians</b>	<b>tenure</b> 15:16	85:1,18 86:4
<b>sweepers</b> 11:23	172:14 173:13	28:15 32:20	53:12	87:2 90:7 93:2
<b>sworn</b> 5:3	173:16,18	42:19 54:20	<b>term</b> 24:9 32:6	93:3,3,5,8,9
180:16	177:7	90:8	71:16 74:15	98:18,21 99:17

367 VALLEY AVENUE  
 (205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

**FREEDOM COURT REPORTING**

Page 203

101:6 127:23	115:20	37:2 38:9 40:3	<b>tier</b> 14:23 15:4,7	<b>timely</b> 63:13
128:7 131:12	<b>theory</b> 111:13	43:20 45:9	<b>tiers</b> 27:18,23	<b>times</b> 45:10
131:17 132:11	<b>thereabouts</b>	49:11 53:6,7	<b>till</b> 88:21,23	65:19 72:21
132:12,16	173:6	55:8,21 56:13	141:4	75:4 84:6 92:9
133:9 149:14	<b>thereof</b> 181:16	60:9 67:13	<b>time</b> 3:13,14	92:10 99:15
151:18 152:13	<b>thermometer</b>	68:1,5 72:14	12:13 16:13	100:8,21
152:22 153:8	85:9	77:23 79:2	18:11 19:23	101:17 102:3
173:23 174:6,6	<b>thing</b> 15:18	82:6 86:1	27:6,8,13 35:2	111:7 113:12
<b>tested</b> 11:16	25:14 31:2	94:20 95:3	36:14 37:9	113:21 132:4
12:14 74:8	48:17 74:5	96:11,14 97:4	40:14 43:3	152:4 178:13
<b>tester</b> 112:22	78:7 85:6,13	98:1,7 106:6,6	51:22 53:4	<b>timetable</b> 109:4
165:2 166:23	86:9,18 94:14	107:9 108:14	54:18 56:5,19	<b>timing</b> 153:21
175:13 177:20	94:19 101:20	114:22 119:16	58:5 60:4	<b>tip</b> 154:21
<b>testified</b> 5:4	105:12 113:2	120:7 123:17	64:23 65:1,5	<b>title</b> 34:10 83:15
56:13 167:19	114:1 116:11	123:18 124:21	66:2,15,19,20	<b>titles</b> 28:23 29:2
<b>testimony</b>	118:23 119:4	126:12 133:11	67:22 72:1	<b>toaster</b> 12:1
169:22	120:11 123:6	136:20 141:1	75:15,17 78:12	70:13 86:6,7
<b>testing</b> 11:15	131:16 132:1	144:10,14	79:9,13,14	<b>today</b> 5:16 17:14
12:10,11 25:19	135:6 157:20	156:19 162:16	80:6 81:6	19:10 27:3
26:2,7 36:1	<b>things</b> 12:2	167:13 168:5	82:20 83:14	126:5 157:10
57:12 61:11,18	15:14 17:17	168:10 169:16	84:7 86:2 87:3	<b>told</b> 60:4 73:15
64:17 68:12,14	19:8 31:3	172:21 173:22	89:9 90:11	84:7 94:21
68:16,21 70:16	35:21 36:16	178:17,18	93:9 96:6	98:7 100:6
71:11,16,20	45:3 46:21	<b>thinking</b> 109:14	101:9 102:20	103:17 108:20
73:7 74:6 76:5	57:18 60:21	<b>third</b> 15:7 17:20	103:9 105:7	110:12 119:15
76:8,10,12,15	66:8 69:2	80:20 86:21	107:20 114:2,7	125:2,15 140:3
76:18 77:9,21	70:17,17 71:6	157:15 167:12	115:20 116:16	140:16 143:4
80:11,13 87:5	71:8,9 72:2,11	168:8	116:19 117:4,8	174:17 178:7
97:18 99:3,11	83:4 85:15	<b>thirdhand</b> 59:10	119:15,16	<b>tone</b> 58:6,19
101:14 102:15	87:21 99:12	<b>thought</b> 30:14	120:7 126:7	59:3,8
103:22 105:15	100:5,13,14,16	35:11,13 50:3	128:13,16	<b>tool</b> 52:15
108:18 111:6	100:23 103:16	76:11 77:13	132:2,13 146:6	<b>Topics</b> 4:11
116:20 131:10	104:5 105:4,6	82:10 95:20	146:14 151:7	<b>totally</b> 133:13
131:10,14	107:20 108:19	172:12	152:2,9 153:8	133:21 135:8
153:12 154:8	111:14 113:6	<b>three</b> 9:11 12:21	153:14,20,23	135:13
163:12 164:13	114:11 116:14	13:1 28:18	154:8 155:2,4	<b>touch</b> 39:11,15
175:18 179:5	128:7 136:6,10	29:17 30:1,1,2	155:16,16	85:5 95:21
<b>tests</b> 63:2 71:23	149:6 150:15	30:3,17 76:3	156:3 159:9	113:9 120:21
72:1 99:4,5	165:14,18	93:3,4 167:4	162:13 163:1	<b>touched</b> 136:21
127:22 128:2	168:11	<b>three-month</b>	163:11 165:6	145:8
128:15 153:10	<b>think</b> 9:11,11	167:9,11	165:12 166:21	<b>tough</b> 134:21
<b>Texas</b> 9:1	20:1 22:5	<b>three-year</b> 76:2	167:2,12 168:7	<b>tougher</b> 108:13
<b>Thank</b> 180:1	24:12 26:12,14	<b>ticket</b> 16:18	168:8 172:10	<b>track</b> 31:3 43:5
<b>Thanksgiving</b>	27:11,17 28:7	<b>tidy</b> 83:8	178:14,19,20	<b>trade</b> 8:22 9:2

367 VALLEY AVENUE  
(205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

## FREEDOM COURT REPORTING

Page 204

<b>traded</b> 23:15	101:16 112:11	<b>140:7</b>	166:15	<b>variety</b> 11:21
<b>traffic</b> 16:18	144:8 148:10	<b>unclear</b> 5:23	<b>unusual</b> 91:23	70:10,13
<b>transcript</b>	150:3 153:10	<b>uncomfortable</b>	<b>upset</b> 59:21	<b>various</b> 28:14,19
181:10	153:11 172:19	91:11	<b>use</b> 24:8 34:4	28:21 71:9
<b>transducer</b>	<b>Tuesday</b> 178:3	<b>uncommon</b>	51:8 57:11	99:7 100:14
121:20,20	178:20	117:15,16	62:22 78:10	127:22
122:2,3,6	<b>turn</b> 63:1,2 72:9	<b>understand</b> 5:18	85:11 90:15,18	<b>vent</b> 118:11
<b>transducers</b>	72:19 118:5,8	5:22 19:18	90:22 92:14	<b>verbal</b> 100:11
122:10	118:23 119:10	32:6 36:3	94:4 97:9	106:1,2
<b>transition</b> 64:16	<b>turned</b> 16:7	42:16 44:7	107:22 121:19	<b>verbiage</b> 73:17
65:6	72:21	52:16 62:8	122:1,2 127:19	<b>verifying</b> 101:13
<b>transposes</b>	<b>turning</b> 61:19	64:22 67:2	128:18 159:21	<b>versus</b> 1:7 181:3
121:23	62:9 85:4	73:14,21 92:20	159:23 169:23	<b>vessel</b> 118:11
<b>travel</b> 39:2,4	117:23	100:19 122:12	170:2,9,12	<b>vice-president</b>
79:12	<b>twenty</b> 27:5	122:17 137:14	171:11,13,20	83:16
<b>traveled</b> 134:21	28:20 110:15	138:5 141:8	<b>user</b> 127:14,20	<b>Victor</b> 1:5 2:9
<b>traveling</b> 38:18	<b>Twenty-five</b>	163:11,21	<b>uses</b> 34:1	4:6,9 5:14
38:19	10:19,20	172:21 175:3	<b>usually</b> 62:6	23:10 27:6,13
<b>travels</b> 39:5	<b>twice</b> 178:17,18	177:12	<b>U.S</b> 25:2 26:13	33:9 34:9
<b>trick</b> 50:22	<b>two</b> 9:22 25:4	<b>understanding</b>		35:12 37:2,5
<b>tried</b> 83:6 96:16	28:7 32:13	124:15 134:5		38:3,5,11
120:16 178:19	34:3 35:7	<b>understood</b>	<b>vacation</b> 115:23	40:22 41:13,17
<b>trigger</b> 75:2	37:19 69:16	22:21 142:13	116:4 117:18	42:3,11 46:22
107:23 108:2	70:17 79:7	163:23	117:19,21	46:22 47:5,16
<b>trouble</b> 69:22	86:1 92:9	<b>underwent</b>	121:15 122:15	49:6,22 53:8
85:21 94:14	93:20 102:10	67:16	122:16,19,20	53:17 56:1,5
122:5	104:22 123:18	<b>unfair</b> 94:2	122:21 123:17	56:11 58:16
<b>truck</b> 135:4	136:21 137:2,5	<b>unit</b> 71:1 72:21	124:2,16	59:12,18 60:3
<b>true</b> 82:15 90:23	137:21 138:2	74:6 75:1,5	125:10 155:16	61:3,16 62:8
154:23 179:15	140:14 145:23	80:11 86:16	156:6 173:4	64:10 65:6,22
181:10	145:23 162:6,6	97:18 118:12	176:13 177:17	66:10,16 67:3
<b>truly</b> 141:23,23	168:5 177:9	129:10 132:3,6	178:5	70:6 71:19
<b>truth</b> 5:3,3,4	<b>type</b> 12:2 134:6	132:16,20	<b>vacuum</b> 11:22	73:10 76:11
180:17,17,18	<b>typed</b> 51:12	150:16,19	32:16 34:14,16	79:18 80:1
<b>truthful</b> 21:5	<b>types</b> 45:2 68:22	<b>UNITED</b> 1:1	34:20,22 35:22	83:21 84:5
<b>try</b> 40:1,4 43:3	71:6 85:15	180:20	69:1,4 70:11	86:3 88:17,18
76:2 121:10	<b>typical</b> 51:15	<b>units</b> 62:10 72:5	71:4 93:2	88:22 89:2
135:18 172:18	70:11 117:8	86:12 93:4	98:21 99:1	90:10 95:14,23
174:1	<b>typically</b> 34:4,5	128:4,5,6,20	104:10	97:17 98:12
<b>trying</b> 31:16	42:18 43:1	159:23	<b>valuable</b> 73:22	102:19 103:3,9
43:5 50:22		<b>unit's</b> 61:21	74:3	103:12,21
62:8 64:15	<b>ultimate</b> 78:16	<b>University</b> 159:5	<b>value</b> 70:21	105:8,19
70:16,18 71:4	<b>unaware</b> 140:2	159:11,17	71:14	107:11 108:17
73:20 77:11		161:19 162:5	<b>valve</b> 111:11	110:5,9 111:2

367 VALLEY AVENUE

(205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

## FREEDOM COURT REPORTING

Page 205

111:3,22,23	41:6 44:16	114:15,16	103:8 106:12	159:3 166:4
112:7,23	46:7 47:9,21	115:18 121:4,5	112:22 134:18	<b>When's</b> 126:7
114:16 115:12	64:23 67:15	126:21 127:4	136:18 150:7	<b>white</b> 54:17
115:23 116:3	72:12 81:4	130:15 133:9	151:2 156:5	55:16,18 96:4
116:14,15	99:8 131:20	135:18 136:1	157:14	143:16,17
117:18 119:11	151:10 164:8	137:11,16	<b>ways</b> 66:7	166:10
119:23 120:2	165:4,7 166:6	141:7 142:21	<b>Wednesday</b> 1:22	<b>wife</b> 6:21 7:10
120:17,22	<b>view</b> 127:9,13	143:8 144:2	181:8	7:22 10:13,22
121:9,14 124:3	128:8,10,16	158:9,16	<b>week</b> 120:6	11:9
124:7,13 125:2	129:15,22	161:18 169:21	122:19,23	<b>wife's</b> 7:18
125:9,10 126:9	131:3	170:1 173:2	123:13 124:2	<b>willingly</b> 136:11
127:4 128:9	<b>violate</b> 61:6	179:4	125:9 142:7	<b>window</b> 152:20
129:22 130:10	91:16	<b>wanted</b> 58:22	178:5,16	<b>wire</b> 73:4
132:3,19	<b>violated</b> 52:3	61:16 96:21	<b>weekends</b>	<b>wires</b> 118:3,6
134:10 138:7	155:22 156:3	108:14,20	179:16,18	119:8,14 120:3
138:23 139:11	<b>violates</b> 48:7	116:4,10 122:2	<b>weeks</b> 30:16,16	120:16,20
139:16,19	<b>violating</b> 94:7	128:12,21	54:8 76:3	163:17,22
140:1,6,10,21	<b>violation</b> 51:14	132:3,19	167:8	164:1 168:1
141:17 142:4	51:17 52:9	134:13	<b>went</b> 66:9 83:11	<b>witness</b> 3:20,21
142:19 143:5,5	<b>Virginia</b> 8:6,7	<b>wanting</b> 86:16	111:16 120:13	5:2 56:15
143:15,17	8:16,20 10:23	<b>wants</b> 149:19	120:14,16,18	57:22 117:12
145:2,11	<b>virtually</b> 80:23	<b>warm</b> 85:11	141:14,20	149:21 169:15
146:14 147:5	<b>visit</b> 141:14	<b>warned</b> 90:21	144:10 145:5	181:11
147:21 148:5	<b>visual</b> 106:2	<b>warning</b> 91:1	145:10 156:17	<b>wondering</b>
148:10,18	<b>voices</b> 59:22,23	<b>warranty</b> 76:2	172:2	135:12
149:5,8,13	<b>volume</b> 37:22	<b>WARREN</b> 2:13	<b>weren't</b> 90:21	<b>word</b> 51:8,10
150:2,5,8,11	<b>voluntarily</b>	<b>wasn't</b> 70:2,4	102:3 110:20	135:21 136:16
150:15 151:8	54:10,11	84:6 86:10,15	125:2 163:19	144:23 161:18
151:14,17	141:17	108:23 114:2	<b>we'll</b> 68:3 69:1	170:3,5,9,20
152:11 155:21	<hr/> <b>W</b>	120:5	106:7 121:8	171:5,11,13,20
157:8,18,23	<b>wages</b> 46:7	<b>waste</b> 153:7	122:9 166:5	171:20
160:5,18 161:5	<b>waived</b> 3:11,22	<b>wasting</b> 90:11	172:23	<b>words</b> 57:13
161:9 163:11	181:13	114:3	<b>we're</b> 24:15	134:2 150:20
165:12,14	<b>walk</b> 106:20	<b>watch</b> 110:3	28:20 44:7	170:1 175:1
166:1 167:15	<b>walked</b> 141:18	<b>water</b> 72:10	<b>work</b> 11:11 12:9	
168:22 169:23	173:23	75:8 102:1,4	62:15,20 84:20	15:9,9,19
170:21 171:7	<b>want</b> 21:7 24:12	150:21 152:6,6	99:2 119:6	21:20 22:16,16
172:6,10 173:3	42:6 50:9,23	<b>water-cooler</b>	136:8 137:6,12	23:9,10 24:10
174:10,11,17	51:3,9,9 57:8	172:14	141:8 145:9	24:16,17 28:23
175:12,17	57:23 67:14	<b>way</b> 39:19 43:4	<b>we've</b> 24:1 96:21	31:19 35:6,18
176:6,10 177:3	76:2 87:22,23	58:20 62:3,18	98:1 100:12	35:21,23 36:7
177:16 179:15	93:1,8,9 98:17	63:13 64:1	101:9,20	36:9 37:8,22
181:1	105:8,22 110:1	85:12,13 87:9	102:10 113:18	57:16 65:15
<b>Victor's</b> 40:13		87:15 89:17	113:19 133:11	66:4 68:19
			136:20 157:9	

367 VALLEY AVENUE  
 (205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

## FREEDOM COURT REPORTING

Page 206

69:15 80:15	38:20 70:19	169:19	120 153:1	4
82:1 84:9,11	106:4 132:1,2	years 9:11 10:10	13 156:21 157:1	4 18:17 41:9,11
84:19,20 88:21	139:9 160:15	10:19,20 12:21	147 4:15	91:6 131:4
88:23 91:9,10	<b>world</b> 26:18	13:1 15:20	155 4:16	4th 1:22 181:8
92:3 97:21,22	65:10	16:9 17:6 76:3	156 4:18	401 170:14,16
101:23 103:3	<b>worry</b> 122:10	78:6 110:15	17 4:3	41 4:6,7,8
110:23 112:13	<b>worse</b> 88:3	year's 136:9	180 181:9	44 4:9
113:17,18	118:22	yesterday 65:12	1901 2:15	46 4:10,11
116:6,17	<b>wouldn't</b> 45:9	Yigal 14:12		47 4:13
117:22 121:7,8	59:8 93:13	young 11:3		
121:10,12	106:14 112:3	y'all 50:11	2 1:21 2:6 20:13	5
123:1,3,8	114:5 123:9	<b>Y-i-g-a-l</b> 14:12	20:16 84:16	5 19:2 41:21
127:5 129:14	154:5	<b>Z</b>	88:5,22 89:8	42:1 43:15
130:1 134:9,17	<b>wreck</b> 16:11	<b>zip</b> 6:7,10,12	90:2 92:11	44:15 45:8,21
136:8,9 154:1	<b>write</b> 79:9 128:4	8:17	137:1	52:13 67:1
155:16 159:10	<b>writing</b> 102:8	<b>0</b>	2:30 88:21 89:9	79:3 87:8,9
162:11 164:16	109:16 146:20	<b>02</b> 33:2	20 4:4	97:20 132:14
165:2 166:19	149:15	<b>03</b> 27:7 33:15	2003 46:8 53:5	158:3,11
169:12 170:21	<b>written</b> 43:14	35:1 36:4 37:7	54:12,19	<b>5th</b> 45:17
172:10 179:2,6	50:1,16 51:7	37:14 51:23	133:19 156:20	57 6:16
179:20	51:11 52:9	135:9 162:16	<b>2004</b> 46:8 51:19	
<b>worked</b> 12:22	56:17 88:10	04 27:14 37:16	53:5 54:12,19	6
27:8,15 36:21	100:12 102:10	37:17 45:17,23	56:3 67:17	6 44:18,20 45:14
58:17,18 69:17	107:10,14	51:23 68:4	77:1 146:15	55:22 88:21
69:19 103:6	152:18 170:11	79:1,5,6 80:2	<b>2006</b> 1:23 181:8	97:13,21
146:15 179:16	<b>wrong</b> 101:18	115:1,2 142:16	<b>231-04-0102</b>	133:10 158:2
<b>workers</b> 59:5	101:19,20	160:17 163:7	6:18	<b>6/29</b> 6:15
89:16	113:5 114:4,13	173:4	<b>2400</b> 2:16	<b>6/29/57</b> 6:7
<b>working</b> 32:14	132:21 145:9	<b>1</b>	<b>25th</b> 149:9	
32:19 34:20	<b>wrongly</b> 87:14	<b>117:9,12</b> 126:20	<b>27</b> 79:5,21 80:1	7
53:8 61:21	<b>wrote</b> 79:14	127:7	<b>27th</b> 45:23	7 46:4,6 88:7
62:11,11 69:19	<b>W-2</b> 4:10 46:7	<b>1-to-4</b> 158:12	<b>28th</b> 151:9	97:22 133:13
72:23 81:22	<b>Y</b>	<b>10</b> 88:23 91:19	<b>28,000</b> 38:10	<b>7/28</b> 109:6
83:4 85:2,5,20	<b>yeah</b> 15:17 29:3	92:1,11 100:1		
86:6 87:4 91:9	30:8 38:8	107:2,5	<b>3</b>	<b>8</b> 46:14,17 98:1
91:19 92:11,19	49:21 82:17	<b>10:15</b> 1:23	126:2,14	126:2,14
94:12 101:12	104:9 143:10	<b>10:30</b> 88:23	136:19 140:14	136:19 140:14
102:19 120:20	145:1 149:12	91:20 92:12	145:22	145:22
164:13 165:13	167:6 172:16	<b>107</b> 4:14	<b>8:45</b> 93:11	
165:14	178:15	11 102:13 147:7	<b>812</b> 6:4 9:10	
<b>workload</b> 69:23	<b>year</b> 38:10 43:19	147:10		
70:2 164:21	84:10,12,12,13	<b>12</b> 155:12,13	<b>9</b>	
165:5	136:13 169:17	<b>305-CV-1186...</b>	<b>947:13,15</b> 91:18	
<b>works</b> 22:3,22		1:7 181:3	93:6 98:12	
		<b>32</b> 159:20		
		<b>35203</b> 2:17		
		<b>36078</b> 2:7		

367 VALLEY AVENUE  
 (205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

**FREEDOM COURT REPORTING**

Page 207

148:2 <b>9:30</b> 91:18 92:1 92:2 <b>9:45</b> 92:3				
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**367 VALLEY AVENUE  
(205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660**

# **EURO-PRO**

## **EMPLOYEE EVALUATION**

Employee Name:	Victor Smith
Primary Reviewer:	Ralph Hudnall
Secondary Reviewer:	Terry Robertson
Office:	Auburn
Department	Life Test
Title:	Lab Technician
Job Summary:	This position is responsible for implementing, conducting, monitoring and reporting the results of all Life Tests conducted on Euro-Pro products in the Auburn facility.
Review Date:	August 27, 2004
For Period ending:	June , 2004



# EURO-PRO~~X~~

Area	Performance Appraisal
<b>Job/Knowledge/Competency:</b> Demonstrates the knowledge and skills necessary to perform the job effectively. Performs responsibilities in accordance with job procedures and policies. Acts as a resource person upon whom others rely for assistance.	<ul style="list-style-type: none"> <li><input type="checkbox"/> Performance consistently and significantly above standards in virtually all areas</li> <li><input type="checkbox"/> Performance well above standards in many important aspects</li> <li><input type="checkbox"/> Performance meets standards in all important aspects; good contributor.</li> <li><input type="checkbox"/> Performance slightly below standards in some important aspects, but meets standards in others.</li> <li><input type="checkbox"/> Performance below standards in a number of critical aspects</li> </ul>
<b>Quality/Quantity of Work:</b> Completes assignments in a thorough, accurate, and timely manner that achieves expected outcomes. Exhibits concern for the goals and needs of the department and others that depend on services or work products. Effectively handles multiple tasks. Uses work time productively.	<ul style="list-style-type: none"> <li><input type="checkbox"/> Performance consistently and significantly above standards in virtually all areas</li> <li><input type="checkbox"/> Performance well above standards in many important aspects</li> <li><input type="checkbox"/> Performance meets standards in all important aspects; good contributor.</li> <li><input type="checkbox"/> Performance slightly below standards in some important aspects, but meets standards in others.</li> <li><input type="checkbox"/> Performance below standards in a number of critical aspects</li> </ul>
<b>Dependability:</b> Meets company attendance standards.	<ul style="list-style-type: none"> <li><input type="checkbox"/> 5 Performance consistently and significantly above standards in virtually all areas</li> <li><input type="checkbox"/> Performance well above standards in many important aspects</li> <li><input type="checkbox"/> Performance meets standards in all important aspects; good contributor.</li> <li><input type="checkbox"/> Performance slightly below standards in some important aspects, but meets standards in others.</li> <li><input type="checkbox"/> Performance below standards in a number of critical aspects</li> </ul>
<b>Teamwork &amp; Cooperation:</b> Maintains harmonious and effective work relationships with fellow employees, supervisors and others. Adapts to changing priorities and demands. Shares information and resources with others to promote positive and collaborate work relationships.	<ul style="list-style-type: none"> <li><input type="checkbox"/> Performance consistently and significantly above standards in virtually all areas</li> <li><input type="checkbox"/> Performance well above standards in many important aspects</li> <li><input type="checkbox"/> Performance meets standards in all important aspects; good contributor.</li> <li><input type="checkbox"/> Performance slightly below standards in some important aspects, but meets standards in others.</li> <li><input type="checkbox"/> Performance below standards in a number of critical aspects</li> </ul>
<b>Interpersonal and Communication Skills:</b> Exercises courtesy, tact and respect when interacting with all members of the Company and external persons. Listens carefully to requests and seeks clarification to ensure understanding.	<ul style="list-style-type: none"> <li><input type="checkbox"/> Performance consistently and significantly above standards in virtually all areas</li> <li><input type="checkbox"/> Performance well above standards in many important aspects</li> <li><input type="checkbox"/> Performance meets standards in all important aspects; good contributor.</li> <li><input type="checkbox"/> Performance slightly below standards in some important aspects, but meets standards in others.</li> <li><input type="checkbox"/> Performance below standards in a number of critical aspects</li> </ul>
<b>Initiative/Commitment:</b> Demonstrates personal responsibility when performing duties. Offers assistance to support the goals and objects of the department and division. Performs with minimal supervision. Seeks guidance when goals or priorities are unclear.	<ul style="list-style-type: none"> <li><input type="checkbox"/> Performance consistently and significantly above standards in virtually all areas</li> <li><input type="checkbox"/> Performance well above standards in many important aspects</li> <li><input type="checkbox"/> 3 Performance meets standards in all important aspects; good contributor.</li> <li><input type="checkbox"/> Performance slightly below standards in some important aspects, but meets standards in others.</li> <li><input type="checkbox"/> Performance below standards in a number of critical aspects</li> </ul>

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**Areas of strength:**

1	Victor's main strength is building test fixtures. He is not afraid to ask for assistance when needed, but he also has his own ideas about the construction of the fixture.
2	Victor is very dependable. He is constantly in the office before 8AM, and never leaves before 5PM.
3	Victor is very exacting in accomplishing his assigned tasks. He is detailed oriented and sees his assignments through to completion.

**Areas that need improvement:**

1	Victor needs to accept the entire role for which he was hired. He must accept that the role is constantly changing and growing.
2	There is a concern with accomplishing the routine tasks of the job. An example is cleaning his work area before leaving for the day. Personal areas especially should be cleaned before leaving for the day.
3	Victor needs to improve his initiative. He needs to take it upon himself to correct problems seen, either fixtures, or products on test. Don't just report that a product has quit working, look to see if he can find the trouble. In time, he will become the main analyst to determine life test failures. This cannot happen if he does not start looking into the problems as they occur.

**Objectives to accomplish in the Next 12 Months:**

1	Implement a daily check list of all products on Life Test. For example, a clipboard at the Deep Fryers, where external temperatures can be recorded twice daily. Incorporate similar reports for all tests being conducted.
2	Begin to be more involved with Life test analysis. Further grow your analytical skills to the point that you are conducting all post test analysis by yourself.
3	Formalize reporting structure of failed and end of life test products. We need you to be the go to guy for all things concerning Life Test.

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Comments

Victor came to us with Technician experience, but not with consumer products, and no experience with Life Testing or fixture set ups. He started in the Cleanability area, becoming the night shift leader. We eventually recognized the need for someone to assist in Life Testing, and Victor accepted this role. He has been instrumental in developing and implementing various life test set ups. He is now in the midst of developing an automated fixture for Steam Cleaners, and will implement a Preventive Maintenance system for all Life Test fixtures and equipment within the next two weeks. We also need to begin recording specific daily parameters to ensure all products under test are functioning correctly and within Euro-Pro specifications. Victor has to realize that the job is continually growing and changing. This means new tasks and assignments will continue to be added to his work load. Prioritizing these assignments, and meeting the established completion dates will be the main challenge. Further, the formalization of reporting the status of the testing is equally important. He will need to expand his review of failed and completed tests, to eventually become the first line of analysis of all products coming off test. He will be issuing reports in a similar manner as the Lab Techs and Test Engineers.

Overall Performance

- \_\_\_ Performance consistently and significantly above standards in virtually all areas; far exceeds normal expectations.
- \_\_\_ Performance well above standards in many important aspects; usually exceeds normal expectations
- 3.5- Performance meets standards in all important aspects; good contributor.
- \_\_\_ Performance slightly below standards in some important aspects, but meets standards in others; performance generally acceptable, but improvement needed to fully achieve functional performance level.
- \_\_\_ Performance below standards in a number of critical aspects; substantial improvement needed.

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Acknowledgement:

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*John D. Smith*

Employee Signature

*John D. Smith*

Reviewer Signature

8/31/04

Date

8/31/04

Date

**EURO-PRO~~X~~**

## Victor Smith

### Current Performance/Accomplishments:

- Eagerly takes on new responsibilities and tasks.
- Has continued to improve the understanding of specified test standards.
- Demonstrates the ability to complete assigned tasks.
- Helped to develop and assemble new life test setups.
- Shows good organization skills. He is utilizing and maintaining a filing system that allows him to accurately track the progress of product life testing.
- Victor also provides accurate updates on product life testing in our morning meetings.
- He seeks help when needed and is able to use the information to complete testing requirements.
- Victor has shown the ability to take assigned tasks to the next level of work.
- He has assisted in improving the cleanability testing and scheduling.
- He has taken responsibility for monitoring and setting up life tests for all Euro-Pro products being tested in Alabama.

### Improvements/Goals:

- Make sure any and all issues arising from the Life testing gets reported to the appropriate Technician/Engineer team immediately.
- Remain more focused on current assigned projects. Refrain from "adding yourself" to conversations and projects until asked in. This doesn't mean only speak when spoken to; just make sure you are needed before joining discussions. The problem is this is one way to get yourself overloaded, AND it can appear as if you don't have enough to keep busy.
- Take life testing to the next level. We will want all test setups to be transitioned from the existing wood frames into professional setups, using enclosures for the control system.
- Start developing life test specifications and methods for additional products.
- Needs to continue to learn and understand the life test standards.
- Strive to become more independent and self-reliant in your day to day work. Work more with the PLC's, so you become the internal expert, and we can get away from asking Brian for help with Life Test setups.
- Interaction with co-workers: When communicating with the cleanability crew make sure you address them as peers and with respect. Take time to speak carefully and in a level tone. Make sure to listen fully and then answer. Basically, put yourself in their shoes, and speak to them as you would want to be spoken to.
- Don't be afraid to tell the Cleanability group to come see Ralph with their problems. I know that was your area of expertise, but not any longer. It's natural for them to see you first. Again, in order to keep from being overloaded, make them see Ralph with issues.
- Make sure to deliver requested data/information as requested on time and regularly.

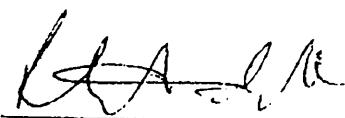
Reviewed's Comments:

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Supervisor Signature and Date:

  
5/5/04

Reviewed's Signature and Date

 5-5-04



Victor Smith (General)

1. *Don't appear to want to be here?*
2. *Steam station life testing station - Already total investment, 25K could have built outside not any testing for six months. We have been waiting for this item to run for six months, as of today it is still not running, we have spent so much money trying to get this item up and running, this is just not acceptable. -*
3. *We acquired lab view software controls from Auburn University, this was brought here, there have been no attempts to get this free software up and running to tie into all of the stations, this is ill use of the equipment and free information that we have been given, but nothing has been utilized.*
4. *Pant press has been in the reliability stations for many months, I have come upon this unit not working, while inquiring with Victor he indicated that he was not running this item, did not have time, which is totally unacceptable.*
5. *Failure and analysis of failed items in reliability are defined in his job description, I have had problem with Victor getting these done, he always relies on someone else to do these, this has been overall problem with him taking responsibility of reviewing and analyzing things first hand and giving reports, he always seem to want someone else to perform and do this, instead of himself.*
6. *Clean up of area - always seemed painful that he did not want to pick up or clean up as the other employees, this is his area. He even went to order signs and said that everyone else was responsible for making a mess and not him. Point for the company is that we are all responsible, I sweep at least twice a week and pick up trash daily, so I believe everyone should be responsible. He would not take responsibility for his area, this was a major problem, same trash would sit there for weeks.*
7. *Totally changed personality after being made permanent, he was made permanent before many other temp employees, based on his resume and skills of what he was capable of doing electrically and electronically. In his exit review it was interesting that he said he was given a task he could not complete, was not given help (we had degreed engineers offering to help, but their help was refused) and this is where the problems started and ended.*
8. *There were previous issues that were discussed, 1. Did not like the fact that he could not discuss bonuses with other employees, said this did not make sense, when actually he was being given a bonus based on my recommendation only, he was not eligible for bonus anyway. 2. Was accused while here of a problem with two other female employees of harassment both from the office and outside the office, this created a problem area very early on, but we discussed and allowed this to pass as warning.*



Other Hardware Received - 6/26

Fittings - 6/22 Due

Electrovalves - In House

Pressure Transducers - 6/26

PLC Programming - 7/14

Water Fixture Build - 7/1

Trigger Fixture Design - 7/2

Trigger Fixture Build - 7/8

Testing & Debugging - 7/21

Project Complete - 7/28

Steam Cleaner

Life Test Fixture

